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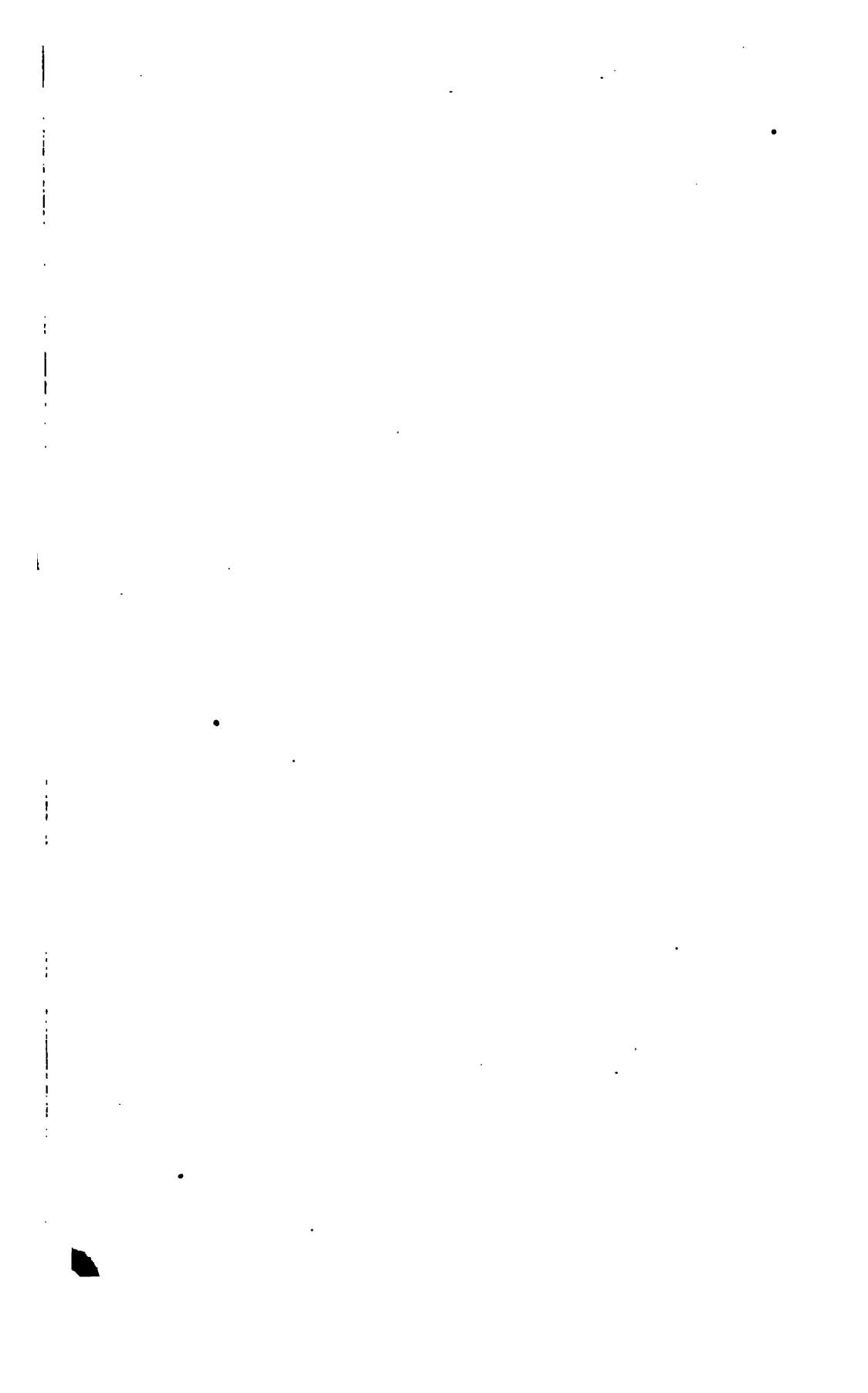
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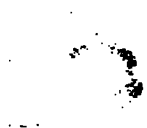
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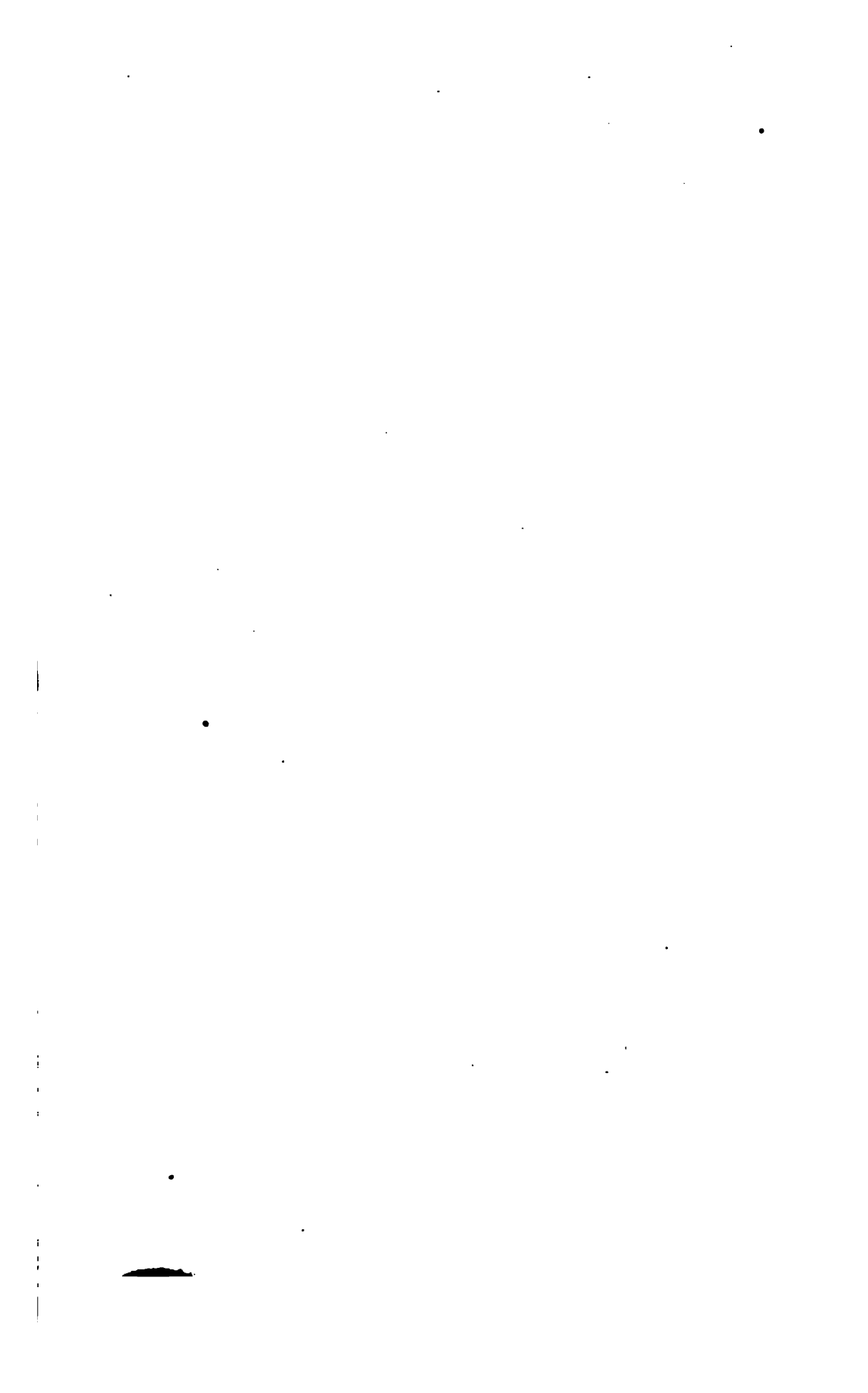
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FROM

THE QUARTERLY JOURNAL
OF ECONOMICS

1888







PREFACE

THE field of the following dissertation was suggested by the correspondence between my grandfather and Acting consul Walker, in the *Pickens-Bonham Manuscripts*, to which my attention was called by Mr. J. C. Fitzpatrick, of the Library of Congress, who has kindly assisted me in other ways. The title was suggested by Professor Pierce Butler, of Tulane University, who has made other helpful suggestions which have facilitated my work. During the preparation of the manuscript Professor John Bassett Moore, of Columbia University, has given me valuable advice and assistance, procuring important data from the State Department for me, and has done me the great service of reading and criticising the manuscript. Professor William A. Dunning has done likewise, and has read the proof-sheets and made many valuable suggestions.

I am indebted to Mr. Trist Wood, of New Orleans, for permission to reprint certain tables from his father's *Confederate Handbook*; to Mr. R. D. W. Connor, of the North Carolina Historical Commission, for extracts from Governor Clark's letter-book; to Mr. William Beer, of the Howard Memorial Library, for an extract from the New Orleans *Delta*; to Captain Charles Labuzan, Jr., of Mobile, for valuable information about his term in the consul's office there; to Mr. S. P. Collier, clerk of the United States Courts at Wilmington, North Carolina, for the records of the Confederate Admiralty Court; to the

following gentlemen for investigating documents, verifying data or profitable suggestions: Mr. E. W. Winkler, of the Texas State Library; Mr. H. A. Morrison, of the Library of Congress; Dr. J. F. Jameson, of the Carnegie Institution; Dr. W. D. Johnston and Messrs. F. C. and F. W. Erb, of the Library of Columbia University; Mr. M. J. O'Reilly, of the United States Treasury Department; Dr. T. M. Owen, of the Alabama Historical Commission; Dr. Dunbar Rowland, of the Mississippi Department of Archives; Mr. Eustace Percy, of the British Embassy; Mr. F. D. Manners, of the British consulate-general at New York, and M. Henri Gourand, of the French consulate-general. Miss Ethel H. Budington, of the Columbia University Library, and Miss Adelaide R. Hasse, of the New York Public Library, have given me indispensable information about the British official documents.

Without the untiring assistance of my wife in copying extracts, verifying references, *etc.*, the monograph would not yet be ready for the press.

MILLEDGE L. BONHAM, JR.

COLUMBIA UNIVERSITY, *June, 1911.*

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ERRATA.

- Page 18, line 1. Insert *the* before *foreign*.
 Page 47, line 4. Note 2 after "*States*."
 Page 96. Note 1 for 23th N. C. read 23rd.
 Page 117, line 31. For *commandments* read *commandants*.
 Page 135, line 26. Note 1 should be note 3.
 Page 140, line 1. For *as* read *at*.
 Page 144, line 22. For *government* read *governor*.
 Page 178, line 20. For *case of* read *case for*.
 Page 186. Note 1 = *O. R. N.*, xvi, 749 *et seq*.
 Page 216, line 6. For *parts* read *ports*.
 Page 244, line 20. For *to Slidell* read *by Slidell*.
 Page 266, line 1. For *Bowey* read *Bowley*.

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CHAPTER I

THE STATUS AT THE OUTBREAK OF THE WAR

At the time of the formation of the Confederacy, the consuls in Southern ports represented thirty-nine powers, ranging from free cities like Lübeck to empires like Russia.¹ In some cases one man represented several countries, particularly the Latin-American countries. The British, French and Spanish consuls were the most numerous, and the British historically the most important. This was due to the rank of Great Britain, and to the identity of language and similarity of appearance of English and Americans. With a few exceptions the other consuls played an unimportant role in comparison with the British. The most conspicuous of these exceptions were Reichard, Prussian consul at New Orleans, who raised a regiment of his fellow-countrymen and eventually became a general in the Confederate army;² E. W. Barnwell, Russian acting-consul at Charleston,³ whose *exequatur* was revoked for entering the Confederate forces; and Théron, who represented Spain and France at Galveston. Théron was suspected of attempt-

¹ *Index to Exequaturs*, Archives of U. S. State Dept.; *Almanach de Gotha*, 1860 *et seq.* For convenience a list of British consuls is given in the appendix.

² *Official Records of the Union and Confederate Armies*, 3 Series, ii, 722-5. (Henceforth cited as *O. R. A.*) Krutchnitt, Reichard's partner, who became acting-consul, was Benjamin's brother-in-law.

³ Seward's *Works*, v, 243. Bancroft's *Seward*, ii, 203. Mr. Barnwell was, of course, a Carolinian.

ing to alienate the affections of Texas from the Confederacy, so was dismissed by Benjamin in the fall of 1862.¹ Ernest Raven, consul from Saxe-Coburg-Gotha to Galveston, had the unique distinction of being the only consul granted an *exequatur* by the Confederate authorities.²

Great Britain had consuls at Portland (Maine), Boston, New York, Buffalo, Philadelphia, Chicago, St. Louis and San Francisco, who were usually in sympathy with local sentiments. Bernal, at Baltimore, was too recent an arrival³ to be in close *rapprochement* with either side.

The consular districts in the South were as follows: Virginia, with a consul at Richmond, vice-consuls there and at Norfolk and Fredericksburg; the Carolinas, with the consul at Charleston, a vice-consul there and one at Wilmington; Georgia, with the office at Savannah; Florida and Alabama, with a consul at Mobile, vice-consuls at Pensacola and Key West; Louisiana, with the consul at New Orleans; Texas, with a consul at Galveston. Judging by the salary list Charleston was the most important of these, as only the consul-general at New York received more, and none of the other Southern consuls so much. Arkansas, Kentucky and Tennessee were under the care of the consul at St. Louis, while jurisdiction over Mississippi appears to have been divided between the offices at Mobile and New Orleans.⁴

The officials in the South had been, in most cases, in

¹ *Pickett Papers*. (Under this caption are cited the Manuscript Archives of the Confederate State Department.) Also see *N. A. Review*, Oct., 1879.

² *Journals C. S. Congress*, v, 42 *et seq.*

³ *London Gazette*, Jan. 29, 1861.

⁴ *Index to Exequaturs, Pickett Papers, Almanach de Gotha*, 1861, 306 *et seq.*, *Sessional Papers of Parliament*, *passim*.

office for some time, and were in more or less veiled sympathy with the secessionists, in which they apparently reflected the opinion of the bulk of the foreigners residing in the South.¹ They found themselves pulled one way by their sympathies and the adroit Benjamin, another by their official superiors. Lord Russell, while anxious to appear neutral, was, on the whole, friendly to the North,² while Lord Lyons was reported to have said that if Great Britain recognized the Confederates he would resign.³ However that may be, he discharged his difficult duties with so much impartiality as to receive the attacks of the press of both sides, each thinking him in sympathy with the other.

In the Provisional Congress of the Confederacy, on the 26th of July, 1861, Mr. Wigfall, of Texas, introduced a resolution directing the Committee on Foreign Affairs to report on the expediency of allowing consuls accredited to the United States to continue the exercise of their functions in Confederate ports. On the 30th Mr. Rhett, of South Carolina, reported that the committee considered it expedient to postpone the question for the present.⁴ This dodging of the issue had both negative and positive results; it did *not* impress foreign nations with an idea of the vigor and determination of the new government, while it did leave room for vexatious questions to arise in connection with foreign relations. For, as the resolution indicates, there was from the outset a

¹ *London Times*, June 10, 1861. Russell, *Civil War in America*, 80.

² Walpole, *History of Twenty-five Years*, ii, 1-68. Reid, *Lord John Russell*, 313 *et seq.* Rhodes, *History of U. S.*, iv, 388.

³ *London Times*, June 5, 1861. Mr. Henry Adams (*Historical Essays*, 259), thinks he was opposed to the North. For the contrary opinion, see *N. Y. Herald*, Feb. 26, 1862, *London Times*, May 1.

⁴ *Journals of the Congress of the Confederate States*, i, 286, 294.

sentiment in the South averse to allowing foreign consuls to continue their functions. This appears not only in legislative records, but in the daily press. But the politicians had not had time yet to consider the question maturely and seemed to wish to postpone action until they ascertained the attitude of the European powers. Secretary Benjamin later expressed the official position thus: when these consuls' *exequaturs* were granted, the Federal government was the regularly accredited agent of every Southern State, and the power to grant *exequaturs* had been amongst those delegated by the compact of 1787; the subsequent repudiation of the agent did not invalidate prior obligations of the principals, so long as those holding these warrants discharged their duties in an equitable manner; further, the Confederacy had no desire to enforce implied recognition by insisting upon new *exequaturs*.¹ This was entirely consistent with the state sovereignty theory, but as Lord Lyons later acknowledged,² the direction of consuls resident within the territory of one belligerent, by a minister accredited to the other and resident at its capital, inevitably produced friction, and tended to arouse the suspicions of both as to the good faith of Great Britain.

It is probable that the report on the Wigfall resolution was made after conference with the President, who would have taken the opinions of both his secretary of state (Hunter) and his attorney-general (Benjamin). Having taken a position, it was characteristic for him to adhere to it to the last gasp. Even before Mr. Benjamin entered the state office Mr. Davis was accustomed to

¹ *Pickett Papers*. Charleston *Mercury*, June 8, 1863.

² *British and Foreign State Papers, Civil War*, iii, 3 *et seq.* Butler, Judah P. Benjamin, 319.

consult him about many things not strictly within his department, and to attach great weight to his opinions.¹ It seems not unreasonable that the attitude towards the consuls was largely determined by Mr. Benjamin in the beginning as it undoubtedly was in the end.²

¹ Jones, *Rebel War Clerk's Diary*, i, 79-90. Butler, *Benjamin*, *passim*. Du Bose, *Life of Yancey*, 640.

² *Pickett Papers*. As there were frequent changes in the Confederate Cabinet, a list of the holders of the elusive portfolios is given in the appendix.

CHAPTER II

CONSUL BUNCH AND THE DECLARATION OF PARIS

ROBERT BUNCH, the consul at Charleston, was not only the highest-salaried British consul in the Confederacy, but seems to have been the ablest and to have possessed most fully the esteem of Lord Lyons. After having been vice-consul at New York and consul at Philadelphia, he had been transferred to Charleston in July, 1853, having been in the service nine years then.¹ He had evidently ingratiated himself with his *clientèle*, as he was president of St. George's Society.² Like the consul at Savannah, he had bought a summer home in the mountains of western North Carolina and seemed in harmony with his Southern neighbors.³

Naturally the consulate at Charleston was the first to be affected by the war, before the end of which it succeeded in arousing the ire of both Federals and Confederates. When the South Carolina convention seized the custom-house,⁴ the consuls were notified that South Carolina would thenceforth collect the duties. Mr. Bunch at once notified Lord Lyons, who wrote Secretary Black (Dec. 31, 1860), asking for advice as to how the consul should act with regard to the entry and clearance of British vessels. As a Federal statute of 1817 provided

¹ *Sessional Papers*, 1857, viii, 590. N. Y. *Albion*, Oct. 1, 1864. London *Gazette*, Sept. 15, 1864.

² *Charleston Courier*, March 14, 1861, Feb. 7, 1863.

³ Malet, *An Errand to the South*, 242 *et seq.*

⁴ *Journal of the Convention*, 52, 112, *et passim.*

heavy penalties for masters who had not deposited with their consuls their ships' papers, and heavier ones for consuls who issued certificates before seeing the clearance from the "United States collector of customs," Lord Lyons asked if a consul might issue certificates to masters of American or other non-British vessels sailing for British ports with the property of British subjects. He also inquired about the legality of the payment by a British ship of customs duties to the *de facto* authorities. What action would the United States probably take in such a case?¹ Ten days later Judge Black replied that the United States could only regard the acts of South Carolina as an example of the sudden and lawless violence to which all governments are liable: the United States had exclusive jurisdiction over foreign trade and acknowledged no standard but the Acts of Congress; therefore a payment to any but the United States collector would be a mispayment; no clearance contrary to United States laws would be valid. He concluded by declining to give an opinion as to Federal action in hypothetical cases; that would be determined when such cases should arise.²

Two weeks later the New York *Albion*³ spoke as follows:

It has been said that Her Britannic Majesty's consul in Charleston has "recognized" the new order of things in the State of South Carolina in as much as he has given clearance and other papers to captains of British vessels while affairs at the Charleston custom-house have been in partial abeyance, or administered at least under certain changes made on the face of documents in use. What changes these are or the

¹ *British State Papers*, lii, 1179 *et seq.* *Nashville Union and American*, Feb. 12, 1861.

² *Ibid.*

³ Jan. 26, 1861.

validity of them, it is not the business of H. B. Majesty's Consul to investigate. What the British Government may or may not do in the event of a Southern Confederacy or distinct Southern nationalities being permanently established, is not now a case in point. By a law of Congress passed in 1817, it is incumbent on every captain of a foreign ship arriving in a port of the United States to deposit his ship's register and other papers with the consul of his nation, in whose custody they must remain until the ship is again cleared for sea. A breach of this enactment subjects the captain to prosecution, while if the consul neglects his duty as custodian, he too is liable to be sued for penalties varying from \$500 to \$5000.

Briefly then, the consul gives a certificate in the first instance that the vessel sails *bona fide* from the country which he represents, and that the captain has lodged his credentials with him. . . . In the second place, when the ship is about to sail again and is cleared at the custom-house, the captain claims back the register from the consul together with another certificate that he "hath entered and cleared the said vessel according to law and in conformity with the regulations of this consulate." Now it happens,—and though we speak with immediate reference to New York, there is no doubt that similar blank forms are used in Charleston,—it happens, we say, that in neither of these printed forms is there any mention whatever of the Federal Government, or allusion even to a "year of independence" wherein they may be dated. They are British forms, not American, and adhere to the old formula "Anno Domini." The first one issued is addressed simply to the Collector of the Port. The second certificate, in a general sense alone, is all that is required and has no address.

Now if Mr. Bunch, who worthily supervises British interests in the two Carolinas, were to trouble himself with the peculiar and anomalous condition of the Charleston Custom House, when called upon simply to sign such document, . . . he would be exercising a discretion more nice than wise. It is his function to facilitate, not to trammel commercial intercourse. Nor is he called upon to scrutinize the relations ex-

isting between the Collector of the Port for the time being, and the Government to which he is accredited until required by that Government through the usual medium of communication at Washington to adopt any particular course.

Though Mr. Bunch's continuing to issue clearances was approved by Lord Russell, who had instructed him to remain at his post,¹ it produced dissatisfaction at the North and did not prepossess the incoming administration in his favor. As was hinted by the *Albion*, there was a tendency to assume that Mr. Bunch's action was of international importance in that it recognized South Carolina as independent.² But a consul is a commercial official, who, unless specially designated as chargé d'affaires, has no diplomatic status.³ Not only did the circumstances justify Consul Bunch's remaining, but the papers quoted numerous precedents of consuls doing likewise in Spain, Italy and South America, even after the rupture of diplomatic relations between their own country and that in which they were officially stationed.⁴ But we shall see that those remaining in the Confederacy could not confine themselves to purely commercial affairs.

England and France were watching the course of

¹ Walpole, *Russell*, ii, 549 *et seq.* Hansard's *Parliamentary Debates*, clxi, 814, 321. (All citations of this work refer to the 3rd series.)

² *Charleston Courier*, March 14, 1861.

³ "Les relations internationales lui sont et lui demeurent étrangères." Martens, *Guide Diplomatique*, i, 222. Also see Spencer Walpole, *Foreign Relations*, 155. Hall, *Treatise on Int. Law*, 317. Moore, *Digest Int. Law*, v, 34. Blunsthli, *Völkerrecht*, 25, 156. Vattel, *Droit des Gens*, 120 *et seq.* In 1814 Lord Ellenborough ruled that a consul's functions are purely commercial and that he does not represent his sovereign in a diplomatic capacity. Stowell, *Consular Cases and Opinions*, 426.

⁴ See the *Courier* and the *Albion* of the dates cited.

events in America with anxious eyes, as their commerce would be seriously affected by a maritime war. Hence they decided to act in concert, this course being more likely to secure their ends, and they so instructed their respective ministers.¹ The fall of Fort Sumter was succeeded by President Lincoln's call for volunteers: Mr. Davis' reply was a proclamation, inviting applications for letters of marque. Mr. Lincoln soon declared a blockade from South Carolina to Texas, inclusive, later adding North Carolina and Virginia.* The news was received in Europe about the 1st of May: Lord Russell and M. Thouvenel decided to unite in asking the two parties to the approaching struggle to adopt formally Articles II, III and IV of the Declaration of Paris.³ On the 13th⁴ the Queen's Proclamation of Neutrality was issued as a result of the decision of the Cabinet and the law officers of the Crown that "the revolted states must be regarded as a belligerent."⁵ The Emperor followed suit June 10th.⁶

The Declaration of Paris, as is well known, was a treaty relating to maritime international law signed by seven of the powers in 1856. Its provisions were these;

I. Privateering is and remains abolished.

II. The neutral flag covers the enemy's goods with the exception of contraband of war.

¹ *Documents Diplomatiques*, 1861, *passim*. *Sessional Papers*, 1862, lxii, 538 *et seq.*

² Davis' proclamation of Apr. 17, will be found in Richardson's *Messages and Papers of the Confederacy*, i, 60. Lincoln's of the 19th and 27th in *Messages and Papers of the Presidents*, vi, 13-15.

³ *Sessional Papers*, *loc. cit.*, 537.

⁴ *London Gazette*, May 15.

⁵ Bernard, *Neutrality of Great Britain*, 127 *et seq.*

⁶ *Docts. Dip.*, 1861, 97 *et seq.*

III. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.

IV. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.¹

Amongst others, the United States was invited to accede to it, but Marcy declined unless the first article should be amended to exempt from capture the private property of belligerents, other than contraband of war. This was not agreed to, and the matter was dropped.

In 1861 it was highly desirable to have both contestants accede to this agreement, but in the light of Davis's proclamation it would have been useless to ask for the ratification of the first article, so this was not proposed. Mr. Frederic Bancroft² shows plainly that in not asking accession to the Declaration *in toto*, France and England were violating the original agreement; nevertheless, they instructed their ministers to broach the matter at Washington and to select consuls to present it to the Confederates. But Seward had hoped to use the ratification of the treaty as a lever to compel Europe to treat Confederate privateers as pirates, and further was displeased at seeing Lyons and Mercier acting together; hence their efforts failed.³

Lord Russell had suggested that the consul at New Orleans or Charleston be entrusted with the task of

¹ The Declaration, its history, *etc.*, are treated from different viewpoints by Pain, *Chronology and Analysis of Int. Law*, 78, Aegidi and Klaubold, *Frei Schiff unter Feindes Flagge*, H. Adams, *Historical Essays*, 237, Bowles, *Declaration of Paris*, Stark, *Abolition of Privateering, etc.*, pt. iii.

² *Life of Seward*, ii, 196 *et seq.*

³ *Ibid.* 180, 193. Einstein, *Louis Napoleon and American Diplomacy*, 22. *Sessional Papers*, *loc. cit.*, 545.

getting the consent of the Confederate government. Lyons preferred Bunch, whom he instructed to act with M. de Belligny, the French consul at the same port, who received similar instructions from the French minister.¹

Meanwhile events had occurred which served to arouse Northern suspicions against the British consuls in general and Bunch in particular. Therefore the authorities were on the alert for any overt act that would enable them to get rid of him. Mr. Simeon Draper, of the Union Defense Committee of New York, wrote Secretary Cameron, June 17, that Lord Lyons, upon Bunch's recommendation, had issued a passport to Purcell M. Quillen (or P. McQuillen), of Charleston, who was in New York for the alleged purpose of procuring munitions of war to be sent south. He was thought to be only one of many. Draper's information was derived from H. G. Julian and Hiram Anderson, of New York. Quillen was directed to report at the State Department to have his passport countersigned. The next we hear of him he was appealing to the Legation to get him out of "this damned jail." He made oath that he had done nothing clandestine or hostile. Because it was difficult to get the witnesses to come to Washington, Quillen was transferred to Fort Lafayette, where he made affidavit that he had come to New York to seek a commission in the United States army. He denied that Mr. Bunch was in the habit of distributing passports indiscriminately, but said Governor Letcher and the vice-consul at Richmond had issued several. He admitted to one of the officers that he had taken part in the bombardment of Sumter, but affirmed that he had been coerced by the Charleston Vigilance Committee, with whose demands Mr. Bunch

¹ *Sessional Papers, loc. cit.*, 549, 560.

advised him to comply; Mr. Bunch, Quillen said, had been instructed by Lord Lyons that British subjects who had resided six months in South Carolina were liable for military duty. July 23 a writ of *habeas corpus* was issued for Quillen. E. B. Smith, United States district attorney, suggested that Quillen was too insignificant to make an issue about, but Colonel Burke, commanding at New York, was ordered by General Scott not to honor the writ. August 5 Lord Lyons, in a private note to Mr. Seward, suggested "that it would be expedient rather to exercise your discretionary power . . . than to discuss legal questions. In the same spirit in which we spoke of the subject last night, I venture to say that I should be very glad to have the means as soon as possible, of anticipating any sensation which the case might make on the other side of the Atlantic." This seems to have made the desired impression, for the same day Colonel Townsend, of the adjutant-general's office, telegraphed Colonel Burke, "it is deemed advisable by higher authorities that P. M. Quillen should be quietly released."¹

Other matters than the case of Quillen contributed to bring the Charleston consul under suspicion. On June 20 Superintendent Kennedy, of the New York Metropolitan Police, wrote the State Department that Mr. Bunch was a "notorious secessionist," who was using his official position to aid that movement; that he had supplied passports to citizens of the United States, sometimes making them bearers of despatches to the British legation; that "treasonable correspondence" was sent, under Mr. Bunch's consular seal, to various persons, in the care of Mr. Archibald, consul at New York, who had told Superintendent Kennedy that he frequently

¹ The data concerning Quillen may be found in *O. R. A.*, 2, ii, 415-424.

received packages from Bunch for strangers who called for them. Kennedy exonerated Archibald from any knowledge of the contents of these packages.¹ J. E. Cooley wrote from Florence (July 6) that while conversing with the American consul there, he had been shown letters from "rebels" sent under cover by the British consul at Richmond. The consul at Florence, said Mr. Cooley, was an appointee of Buchanan's from North Carolina, and was reluctant to report the matter to Washington. Cooley urged him to do so, but in case he should not, Cooley reported the matter to Senator Preston King, of New York, because, he said,

if the British consul in Richmond is obliging enough to render a facility of this kind to one rebel he can hardly refuse it to others, and for any purpose that may suit the convenience of those who desire, and if one British consul resident in the revolted States will lend himself for the use of the enemies of the Government to which he stands accredited, is it not likely that others similarly situated do the same thing, and that through this convenient consular postal medium Jeff Davis and the other head rebels of the South are kept daily advised of whatever is being done on the part of the Federal Government to counteract their nefarious intentions?²

Senator King seems to have turned Cooley's letter over to Mr. Seward, who, in the light of this and Kennedy's letters, Quillen's case and Bunch's action about the clearances, was hardly disposed to ignore any open dereliction on the part of the consul at Charleston.

Lord Lyons sent instructions, July 5, to Mr. Bunch to approach the Confederate government with regard to accession to the Declaration. It was suggested that the advances be made through Governor Pickens, of South

¹ *O. R. A.*, 2, ii, 644.

² *Ibid.* 16 *et seq.*

Carolina, and Mr. Bunch was told to act in concert with the French consul.¹ As Governor Pickens was at his plantation in Edgefield, Mr. Bunch and M. de Belligny decided to select another channel: they prevailed upon W. H. Trescot (assistant-secretary of state under Buchanan) to undertake the matter. Mr. Trescot left Charleston on the 20th; when he reached Richmond he found that Mr. Davis had joined the army near Manassas. He followed and had an interview with him at Gordonsville. The President was disposed to object because France and England had not made the proposition through the Confederate commissioners, Messrs. Mann, Yancey and Rost. Trescot explained that they had not yet been received by the French and British governments, but argued that if Mr. Davis should receive the proposition favorably and should let it be known that he would communicate his decision by the commissioners, this would conduce to their reception, which, in turn, would hasten recognition of the Confederacy.² The President was not entirely satisfied, but agreed to submit the matter to a cabinet meeting, which decided to recommend that Congress accede to the last three articles. Mr. Hunter, of Virginia, introduced a resolution, July 30; on August 3 the Committee on Foreign Affairs recommended its adoption. On motion of Mr. Barnwell, of South Carolina, the Declaration was adopted on the 8th with the proviso that the Confederacy assented to the last three articles, but declined to agree to the first. This was reconsidered and laid on the table, not, however, before news of it reached the papers. In secret

¹ *Sessional Papers*, 1862, lxii, 541-9. A list of the war governors is given in the appendix.

² Mr. Trescot related this to Mr. Frederic Bancroft. See the latter's *Seward*, ii, 198.

session on the 13th it was decided to substitute for the first article "that we maintain the right of privateering, as it has long been established by the practice and recognized by the law of nations;" otherwise the Declaration was not altered. This resolution was signed by the President the same day.¹ It was acceptable to the British and the French, who had not demanded accession to the first provision. Lord Lyons had seen in the papers the account of the first resolution, and forwarded it to London. The Secretary of State gave Trescott official copies of the later one for Bunch and Belligny, who at once sent them to their respective ministers.

At the time M. Mercier and Lord Lyons had attempted to broach the matter of ratification to Secretary Seward, he had declined to receive any communications assuming the Confederates to be belligerents, and preferred to handle the matter through his own agents in London and Paris. He requested the ministers to leave with him, for his private information, their instructions, from which he learned that similar overtures were to be made to the Confederates.² August 12th he learned by telegram from Cincinnati "that Robert Mure of Charleston was on his way to New York—a bearer of dispatches from the usurping insurrectionary authorities of Richmond to Earl Russell."³ He at once issued orders for Mure's arrest, which was accomplished on the 14th. Mure, a cousin of the consul at New Orleans, was a

¹ *Journal of C. S. Congress*, i, 294-342, *passim*. Davis, *Rise and Fall of the Confederate Govt.*, ii, 372-3.

² *Sessional Papers*, *loc. cit.*, 545.

³ *Diplomatic Correspondence*, 1861, 131. *O. R. A.*, 2, ii, 645, 648. For the entire correspondence about Mure and Bunch see these two works *passim*, also *Dip. Cor.*, 1862, 1-12, *Sess. Papers*, *loc. cit.*, 531-605, *N. Y. Tribune*, Aug. 21, 1861, *Herald*, Aug. 22. Specific references to these various documents will be given only for direct quotations.

merchant at Charleston and had been a captain in the South Carolina militia. He had tried to avoid the Federal military lines by going by way of Louisville and Cincinnati; in the former city he had talked indiscreetly and had been overheard in a hotel.³ In his possession were found a bag with Consul Bunch's seal addressed to Lord Russell, a number of personal letters from parties in the South to friends in England, some secessionist pamphlets, a certificate (or passport) from Mr. Bunch, showing that Mure was a business man of Charleston and a dispatch bearer, and requesting that he be facilitated in his journey, "in virtue of his employment." There was also a letter from the consul to Mure, telling him to hasten to Liverpool with the bag, which it was important for him to keep on his person, but in case of detention by any Federal official, he was to deliver the bag to such official in return for a formal receipt and a promise to deliver it at the British Legation. These papers were sent to Washington and Mure to Fort Lafayette. Mure told Superintendent Kennedy that he was perfectly neutral and was going to London on business, and, as was usual, carried dispatches for the consuls. This time, because of disarrangement of the mails, he was loaded with private letters of whose contents he was ignorant. He was refused permission to receive visitors, but later secured attorneys, and a friend appealed to Mr. Seward in his behalf. In a letter to the lawyers he expressed his conviction that Mr. Bunch had done nothing dishonorable. He was released, October 17, on taking an oath that he would neither correspond with persons in the Confederacy without leave from the State Department, nor do anything hostile to the United States.

³N. Y. *Times*, Aug. 9, 1875.

Seward sent A. H. Schultz, of New York, to carry the bag to Mr. Adams, with a letter informing him of the circumstances of its capture, and directing him to deliver it, with seals unbroken, at the British Foreign Office, with the request that he be informed if there were anything treasonable in its contents, which Mr. Seward thought seemed too bulky for mere legitimate consular dispatches. He also objected to Mr. Bunch's issuing a passport; though such had at times been issued by consuls residing in the United States. Mr. Bunch, amongst others, had been informed that no consular or diplomatic passports would be recognized to pass the United States military lines unless countersigned by the Secretary of State. Yet Mure had passed the lines in violation of this regulation. If the papers in the bag were not of an illegal nature, why, he asked, were they not sent openly to Lord Lyons? Many of the letters found on Mure seemed treasonable to Mr. Seward, though he disclaimed the idea that Lord Russell was a party to this, and expressed his readiness to make reparation for interrupting the consular correspondence, if it were found to be innocent. If not, Mr. Adams was to demand the papers and ask that the consul at Charleston be severely punished.

Lord Lyons had been notified by Edwards, acting-consul at New York, of Mure's arrest, and by Mr. Seward of the latter's letter to the American minister. Edwards stated that Mure admitted being a naturalized American, so he had only asked for the bag, which was refused him. Lord Lyons expressed to Lord Russell his belief that it contained nothing objectionable, and generally upheld Consul Bunch.

Mr. Adams did not receive the fateful bag until September 3, before which time something else had trans-

pired to increase the irritation against Bunch. The same day that Mr. Seward dispatched the letter summarized above, he sent another note to Mr. Adams saying that many of the letters found on Mure "directly implicated Mr. Bunch . . . as a conspirator against the government of the United States." He then quoted a letter which alleged that Bunch had under oath of secrecy imparted to the writer that the first step towards recognition had been taken in sending Trescot to Richmond. Mr. Seward demanded that Bunch be removed, offering to grant an *exequatur* to "any person who may be appointed to fill the office, who will not pervert his functions to hostilities against the United States." A few days later N. A. Garrett, of New York, wrote Mr. Draper, of the Union Defense Committee, that when in England recently, two merchants from Charleston told him that Mr. Bunch "sometimes allowed letters for them to be dropped into his bag for England."¹ Draper sent this to Mr. Seward with a testimonial as to Garrett's reliability.

Mr. Bunch's exploit gave rise to an extended correspondence between Lord Russell and Mr. Adams, which for skill, suavity and polite sarcasm, it would be hard to surpass. Mr. Adams delivered the captured dispatch bag to the Foreign Office with a courteous but firm statement of the various points in the case. In a separate note he spoke of Bunch's allusion to a first step and demanded his removal. September 9, Lord Russell expressed surprise at learning of the transaction about the seizure, and enclosed a note from the consul to the under-secretary, showing that the contents of the bag were mostly letters of British subjects, governesses, servants, *etc.*, who, on account of the exigencies of

¹ *O. R. A.*, 2, ii, 46.

war, had no other means of communicating with their families. Further the bag contained some dividends, the property of British subjects. Lord Russell ended with the information that he would address any further communications on the subject to Lord Lyons. Meanwhile he wrote Lord Cowley to approach the French government in regard to concerted action in the matter of their consuls. M. Thouvenel had heard nothing from M. Mercier, but received the suggestion favorably.

In a separate note of the 9th, Lord Russell wrote to Mr. Adams:

In pursuance of an agreement between the British and French governments, Mr. Bunch was instructed to communicate to the persons exercising authority in the so-called Confederate States the desire of these two governments that the 2nd, 3rd and 4th articles of the Declaration of Paris should be observed by those States in the prosecution of the hostilities in which they were engaged. Mr. Adams will observe that the commerce of Great Britain and France is deeply interested in the maintenance of the Articles providing that the flag covers the goods and that the goods of a neutral taken on board a belligerent ship are not liable to condemnation.

Mr. Bunch therefore, in what he has done in this matter, has acted in obedience to the instructions of his Government, who accept the responsibility of his proceedings so far as they are known to the Foreign Department, and cannot remove him for having obeyed his instructions.

But when it is said in a letter of some person not named, that the first step to the recognition of the Southern States by Great Britain has been taken, the Undersigned begs to decline all responsibility for such a statement.

Her Majesty's Government have already recognized the belligerent character of the Southern States, and they will continue to consider them as belligerents. But Her Majesty's Government have not recognized and are not prepared to rec-

ognize the so-called Confederate States as a separate and independent State.¹

Mr. Adams informed Lord Russell, November 14, that the United States was entirely satisfied with his statement in regard to the contents of the bag, and regretted the results of a "mistaken suspicion."

So the exceptionable nature of Mr. Bunch's proceedings is reduced to his substitution of his Consular bag and official seal for the mail-bag and mail-locks of the United States, and his own mail-carrier for the mail-carrier of the United States.²

Whatever exceptions might be taken in ordinary times would be waived now; the United States deplored that the interruption of the post, amongst other events, worked an infringement of a treaty stipulation, but Great Britain knew, of course, that this was due to no fault of the United States, but to

an insurrection . . . which seeks to overthrow not only the Treaty in question, but even the Government itself and the Union. . . . It is then confidently believed that the known magnanimity of Her Majesty's Government may be relied on not to complain at one and the same time of the breach of an international Postal Treaty under such circumstances & of our resort to a measure which is indispensable to complete the ability to fulfil it.³ ✓

Lord Lyons had in August informed the Foreign Office that he thought the report of the expressions attributed to Consul Bunch was without foundation. So in replying to the above quoted letter from Mr. Adams, Lord Russell denied that the overtures regarding the Declaration constituted a "step towards recognition," or that there

¹ *Sessional Papers, loc. cit.*, 589.

² *Ibid.*, 595.

³ *Ibid.*

had been, as charged in the press, a proposal for a treaty of commerce. But Lord Lyons was ordered to have Bunch give an explicit account of his conduct. This was forwarded early in October. In it Mr. Bunch scouted the idea that Mure had borne any dispatches from the Richmond government. At the time Mure left, he said, Adams Express Company was carrying mail openly and with the consent of the United States, and Mure as an unpaid carrier, carrying unstamped letters, violated no law. As to that ill-starred bag, it contained private letters and various pamphlets issued at Richmond. He denied that his "certificate" was a passport; but had he wished to issue one, it would have been impossible to secure Mr. Seward's signature. As to Mure, he was, Bunch said, a naturalized citizen of the United States, but was nevertheless a loyal British subject, having been naturalized purely for commercial reasons.

Lord Russell considered this letter unsatisfactory, particularly as the consul had violated Lord Lyons' instructions not to entrust dispatches to any person bearing private correspondence:¹ nor did Mr. Bunch make a distinct denial of the "alleged utterance." Before the receipt of Lord Russell's dispatch embodying this judgment, Lord Lyons wrote that Mr. Seward had informed him that the United States had determined to revoke Consul Bunch's *exequatur* and that Minister Adams had been instructed so to inform Her Majesty's Government. Lord Lyons noted that the French consul was ignored. He concluded by defending Mr. Bunch and saying that Secretary Seward had for some time thought that the

¹ In December Bunch sent some dispatches to Lord Lyons by one O'Hara, formerly vice-consul at Porto Rico. These were captured near Fortress Monroe, but were apparently in cipher. See the *Savannah Republican*, Dec. 5 and 6, 1861.

consul was hostile to the United States, which idea he had in vain endeavored to remove. Lord Lyons declared his own feeling that Mr. Bunch's whole career made such suspicions ridiculous!

Mr. Adams informed Lord Russell (Nov. 21) of the contents of Mr. Seward's letter to which Lord Lyons had referred. In it Mr. Seward remarked that as the British government assumed responsibility for Mr. Bunch's negotiations, the matter could be discussed directly with them. Secondly, a law of the United States forbade any person not especially appointed by the President, whether citizen or denizen, to assist in any political correspondence with the government of any foreign state whatever, with intent to influence the measures of any such government in relation to disputes or controversies with the United States, or to defeat the measures of the government. He considered that Consul Bunch had violated this law. In the next place, Great Britain's "deep interest" in the matter discussed was not sufficient justification of Mr. Bunch's action. The rest of the document, as restated more tactfully by Mr. Adams, was as follows:

It is enough to say on this subject that in the view of nearly all civilized nations, the proper agents to make known such wishes are the diplomatic, not the consular agents of a government, and that the only authority in the United States to which any diplomatic communication whatever can be made, is the United States Government itself.

Least of all will the Undersigned be permitted to admit that communication by Mr. Bunch, while exercising consular privileges granted to him with the consent of the United States, with insurgents endeavoring to overthrow the government, can be justified by the declaration of Her Majesty's Ministers that they have already recognized the belligerent character of those insurgents: . . . the Government of the

United States declines to accept any such interpretation as modifying in the least degree its own rights and powers, or the obligations of all friendly nations towards it. . . .

The Undersigned is instructed to announce, as the result of the most calm and impartial deliberation upon the question, the necessity which his Government feels itself under to revoke the *exequatur* of Mr. Bunch.¹

Mr. Adams then intimated Mr. Seward's belief that Mr. Bunch was a rabid partizan, but that Lord Lyons' attitude and conduct had been most exemplary. He was further instructed to say that the consular privileges taken from Mr. Bunch would be "cheerfully allowed to
✓ any successor whom Her Majesty may be pleased to appoint, against whom no grave personal objections are known to exist."

A few days later Lord Russell replied, denying the "unfounded allegations" causing the revocation. Nor would he notice the charge that Bunch was partizan. The crux seemed to be a law of which

Her Majesty's Government might personally have been ignorant, but which Mr. Bunch was bound to have brought to their notice. Taking Mr. Adams' description of this statute as full and accurate, . . . the statute seems to have been enacted for the purpose of preventing citizens or denizens of the United States from aiding or counselling foreign Governments with regard to disputes with the United States.

If this be so, Mr. Bunch having no mission or instruction to aid or counsel a foreign state at enmity with the United States, and not having done so, could have no reason to sup-
✓ pose a statute made *alio intuitu* could be so construed as to apply to his execution of the instructions he had received from Her Majesty's Government, and therefore, there could be no

¹ *Diplomatic Correspondence*, 1862, 1-5. For Seward's letter to Adams see same for 1861, 165-6.

reason why he should have brought to the notice of Her Majesty's Government an United States Statute which had no bearing whatever upon anything which he was instructed to do.

The United States Government, by their quotation of the statute in question, as the foundation on which they rest their complaint against Mr. Bunch seem distinctly to admit that the Government of the Confederate States at Richmond is, as regards the United States, the government of a foreign state . . . an admission which goes further than any acknowledgment with regard to those States which Her Majesty's Government has hitherto made. But if the Confederate States are, as Mr. Adams' note implies, as regards the United States, a foreign state, then the President of the United States has no competence one way or the other with respect to the functions of the consuls of other governments in that foreign state and the *exequaturs* of such consuls can be granted or withdrawn only by the government of such foreign state. For the Confederate States cannot be at one and the same time, 'a foreign state' and part of the territory of the United States. . . .

Mr. Adams is instructed to say that any communications to be addressed to the Government of the so-called Confederate States . . . should have been made by the diplomatic and not the consular agents, and that the 'only authority in the United States to which any diplomatic communication whatever can be made is the Government of the United States itself.' Mr. Adams must be aware that this assertion raises grave questions both of fact and of law. . . .

When Her Majesty's Government are gravely told that an application to the Confederate Government, for redress, ought to be made through the President of the United States, they might well ask whether such a proposition is seriously laid down, and whether the President of the United States can affirm, in the present condition of things, that he has the power to give effect to any such application which might be made to him. . . .

A British subject at New Orleans . . . might be carried away by force to serve with the Confederate troops: could

the President of the United States set him free? Might he not be killed in battle as the only release he could obtain from President Lincoln from his compulsory service? . . . If the United States cannot do this, the course of proceeding suggested by Mr. Adams would be altogether illusory.¹

Lord Russell went on to say that Her Majesty's Government held it to be a principle of international law, "that when the persons or property of the subjects of a state are injured by a *de facto* government, the state so aggrieved has a right to claim from the *de facto* government redress or reparation" or enter into communication with such government to provide against apprehended injury; Great Britain, acting upon this principle, in concert with France, had instructed Bunch to proceed as he did. It might be necessary in future for the protection of British interests, "to have further communication both with the central authorities at Richmond and the governors of the separate States; and in such case communications will continue to be made, but such communications will not imply any recognition of the Confederates as an independent state."

To this Mr. Adams replied that he saw no reasons for the opinion that he admitted the Confederate States to be foreign to the United States. He spoke "of only one government of a foreign state,—obviously Her Majesty's government." The object of the law, he reiterated, was to punish all persons, native or foreign, citizens or denizens, "who are knowingly used by foreign states to foment factions and disturbances in the United States." As applied to Mr. Bunch, he was an officer who, recognized for commercial purposes, had engaged in political negotiations between his government and insurgents,

¹ *Sessional Papers, loc. cit.*, 597 *et seq.*

hence he had knowingly violated the law. Apparently Lord Russell thought the United States must acknowledge Mr. Bunch's right to act under their recognition and "at the same time treat with any of their own citizens who defy their authority, whenever considered advisable by his own government." No self-respecting government would receive a representative on such conditions. Of course Great Britain must protect its citizens in the South, but it could not expect the United States to countenance British agents entering into relations with those states. The objection to Mr. Bunch was that he entered into negotiations with insurgents while a recognized British consul in the United States. His position was exclusively that of a consul at a commercial port; "that such a position does not involve the right of diplomatic negotiations is a well-established fact." So the question is reduced to whether or no the said negotiations were of consular or diplomatic nature. Mr. Adams answers this by showing conclusively that the origin and development of the Declaration of Paris were entirely diplomatic; therefore the United States was justified in withdrawing its recognition from Mr. Bunch as consul since he had entered upon diplomatic functions.¹

Early in December the Foreign Secretary replied that Mr. Bunch had not "advised, aided or assisted" the British Government, but had merely obeyed his superiors in obtaining from *de facto* authorities proper protection for British property. He denied that Great Britain had ever interfered in domestic concerns within the United States, or ever instructed a consular or diplomatic agent to do so, but he claimed the "right of protecting the

¹ Foreign Office, *U. S. Civil War*, i, Document 4, p. 22 *et seq.*, contains this letter as well as the rest of the Adams-Russell part of the controversy. ✓

lives and property of British subjects whenever and by whomsoever they may be threatened, attacked or injured." This, as he had said before, sometimes necessitated correspondence with *de facto* authorities—which right belonged to any state and would be exercised by Great Britain whenever it saw fit, without interfering in the domestic concerns of the United States.¹

Still Mr. Adams was not silenced. He wrote that after carefully re-considering the law in the light of Lord Russell's exposition, he could not find any reason for acquitting Mr. Bunch. Nor could the United States assist Great Britain in an issue, which though not so intended, would raise trouble in the United States; this would be the case if they recognized Bunch as a diplomatic agent. Mr. Adams had never suspected the British Government of desiring to interfere in American domestic affairs nor questioned its right to protect its subjects, but he said :

Mr. Bunch, whilst holding Her Majesty's commission as consul under the recognition of the Government of the United States, has at the same time, been employed in a diplomatic negotiation with persons in armed resistance to their authority. In this, it would appear, he has been acting under instructions from Her Majesty's Government. It is certainly competent to that Government to assume such a responsibility if it thinks proper. But the Undersigned must be permitted to remark that a corresponding responsibility appears to him thereby to devolve upon the Government which he has to represent ; and that is, not, by continuing its own recognition to the officer selected as the agent to conduct these extraordinary negotiations with persons in arms against itself, after the facts have been brought to its knowledge, to give rise to an implication of a doubt of its own rightful authority. For

¹ Foreign Office, *op. cit.*, 24.

these reasons . . . it becomes the duty of the Undersigned to announce that the *exequatur* formerly granted by his Government to Mr. Robert Bunch has been withdrawn.¹

The debate was closed by Lord Russell, who regretted that an action which he considered "not only legitimate, but praiseworthy, had appeared blamable to Mr. Adams." However, he saw nothing to be gained by continuing the discussion.²

Mr. Adams' logic is as keen as Lord Russell's sarcasm. The astute Englishman, with all his specious reasoning and condescending irony, was never able to divert Mr. Adams' attention from the fact that a consular agent had engaged in diplomatic negotiations. His contention that no consul might so do, without special authority, agreed to by the power granting his *exequatur*, was, then as now, a sound proposition of international law.³ Nor did Lord Russell deny that an *exequatur* might be revoked at the pleasure of the grantor.⁴ But Great Britain displayed then the attitude which President Johnson took exception to in his first annual message, *vis.*, that the only measure of its responsibilities was its own inter-

¹ Foreign Office, *op. cit.*, 25. In 1814 Attorney-General Cushing ruled that in the absence of a minister, a consul might be authorized to communicate directly with the government near which he resided, but did not thereby acquire diplomatic privileges. (Stowell, *Consular Cases and Opinions*, 541.) But of course Mr. Adams would not have admitted either that the minister was absent or that Bunch "resided near" the Confederate Government.

² *Ibid.* 26. Some weeks later he wrote Lyons that he had seen Mr. A. about another matter but didn't consider it necessary to bring up this question again. Naturally.

³ See note 3 page 23. This was also confirmed in the abstract by Prof. J. B. Moore in a conversation with the author.

⁴ Bluntschli, *op. cit.*, 166. Hall, *op. cit.*, 319. Phillimore, *Commentaries*, ii, 264.

pretation of its own laws.¹ Mountague Bernard, in treating of this episode, considers the negotiations with Davis covering the Declaration of Paris "an unofficial application," as the "channel of communication was a private person [Trescot] instructed by the British and French consuls at Charleston, who had been themselves instructed by the ministers of their respective countries;" therefore he concludes that Consul Bunch "had offended neither against the letter nor against the spirit of the law."² As Mr. Harris points out, "the fact that the British government assumed the responsibility for the act is of itself sufficient to establish its official character."³ The untenability of Bernard's opinion is further proven by the fact the *unofficialness* of the messenger was purely accidental: Lord Russell's instructions to Lord Lyons were undoubtedly official: Lyons's to the consul were equally so and it was intended that Bunch should deal with Governor Pickens, who was unquestionably an official; and had the latter sent a messenger to Mr. Davis, he would assuredly have been an official messenger.

Mr. Seward chose to rest his case upon the mission of Trescot, but we are told by Lord Lyons that he had long been suspicious of Mr. Bunch. Making proper allowance for any exaggerations due to the intense feeling of Mr. Seward's informants, enough evidence was advanced to show that if Mr. Bunch did not promote clandestine correspondence, he at least winked at it. Already predisposed against Bunch, the Secretary of State was prob-

¹ Richardson, *Messages and Papers of the Presidents*, vi, 368. Blaine complains bitterly of England's attitude in this matter and throughout the war. *Twenty Years of Congress*, i, ch. 26.

² *Neutrality of Great Britain*, 181, 186.

³ *The Trent Affair*, 58.

ably strengthened in his determination by the hints that money was being sent through the consul: he was as anxious to forestall as the Confederates were to establish a safe method of transmitting money to Europe.

A careful perusal of the letters Lord Russell and Lord Lyons wrote to Mr. Adams and Secretary Seward respectively, shows that the British officials took particular pains to make clear that Mr. Bunch and M. de Belligny had acted together. Mr. Einstein and Mr. Bancroft believe that just as Mr. Seward refused to allow the ministers to act in concert, so he would not "bracket" the two consuls, in order "not to give the two countries a common grievance."¹ This was undoubtedly an influential reason, to which we may add that M. de Belligny had not previously rendered himself obnoxious in such little matters as clearances, Quillens, *etc.* ✓

As a matter of public law, the victory was decidedly with Mr. Seward; as a matter of fact, Mr. Bunch remained at Charleston until February, 1863, and was busily engaged, although we note that in 1862 he declined to forward the letters of an English lady and discouraged her attempts to smuggle them through the blockade.² December 6, 1861, Lord Lyons wrote the Foreign Office that he had no reason to believe that the formal revocation of Bunch's authority had been signed, since, in 1856, when three consuls were expelled, letters patent revoking their *exequaturs* appeared in the public prints, which had not been done in Mr. Bunch's case. So Lord Lyons wrote that though Mr. Seward spoke of the revocation in the past tense, he had not felt justified, in the absence of orders from London, in officially noti- ✓

¹ Einstein, *Napoleon III, etc.*, 23. Bancroft, *Seward*, ii, 203.

² Hopley, *Life in the South*, ii, 129, 222.

fyng Mr. Bunch of it, but would acquaint him confidentially with what had occurred, and "advise him to abstain from performing consular acts, the validity of which would be disputed by this government. I shall, however, recommend him to remain at Charleston and to make no unnecessary change in his demeanor until he receives instructions from your Lordship. His vice-consul will be able to sign such papers as are required for use in these States." In a letter acknowledging the right to withdraw an *exequatur*, but denying that this case presented sufficient grounds for it, Lord Russell approved these instructions.¹

At the beginning of the chapter, Bunch was spoken of as the ablest (British) consul in the Confederacy. In spite of the events just related, the statement stands, based upon the testimony of Lord Lyons,² the opinions of the press,³ and of the Charleston Chamber of Commerce,⁴ Lord Russell's remarks in the Commons⁵ and the fact that Mr. Bunch was continued in the service and promoted. Mr. Bancroft⁶ thinks that Bunch, however able a *consul* he may have been, was overwhelmed with the novelty and honor of his first diplomatic essay. This is probably correct, since, though he managed the matter adroitly, he seems not to have been discreet enough to keep silent about it. However, he seems to have improved as a diplomat, for after being consular judge in Cuba, and consul-general in Central America and Brazil, he was appointed consul-general and chargé d'affaires

¹ Foreign Office, *op. cit.*, 268.

² *Ibid.* 27.

³ Charleston *Courier*, March 26, May 10, 1862, Feb. 3, 1863. N. Y. *Albion*, Jan. 26, 1861.

⁴ *Courier*, Feb. 9, 1863.

⁵ Hansard, clxi, 814.

⁶ *Op. cit.*, 201 *et seq.*

at Bogotá,¹ where in 1875 he was selected as umpire in an arbitration between Colombia and the United States, which, oddly enough, he decided in favor of the United States.

In passing it may be noted that the Confederates were of the opinion that requesting the accession of the Confederate government to the Declaration of Paris obligated England and France to receive the Confederate commissioners when they desired to speak of this or any other matter connected with the blockade; further, it obligated them to refuse to countenance the blockade, which they [the Confederates] considered not in accordance with the Declaration's provisions.³ ✓

¹ N. Y. *Albion*, Jan. 1, Nov. 5 and 9, 1864, Nov. 18, 1865, Feb. 10, 1866.

² Moore, *History of International Arbitrations*, ii, 1420 *et seq.*

³ *Charleston Courier*, April 1, 1862, August 19, 1893. Davis, *Rise and Fall*, ii, 343-350, 371-382.

CHAPTER III

THE CONSULS AND THE INSTITUTION OF THE BLOCKADE

As we have seen, by the last of April, 1861, President Lincoln had proclaimed a blockade from Virginia to Texas, inclusive. Copies of the proclamations were sent home by the various ministers, and a question from Lord Lyons drew from Mr. Seward the statement that the blockade would be conducted strictly in accordance with the law of nations, with all possible liberality toward neutrals. The proclamation, he considered, was merely a notice of the intention to blockade; the establishment, at any port, would be announced in proper form by the officer there commanding. In answer to Señor Tassara, he said that "armed vessels of neutral states might enter and depart from interdicted ports" on official business.¹

As rapidly as possible vessels were sent to the various ports, where they issued notice that fifteen days would be allowed for foreign vessels to depart.² Hampton Roads was naturally the first place affected. April 30th, Flag-Officer Pendergrast, on board the *Cumberland* off Fortress Monroe, sent word to the cities of the vicinity that he had sufficient force to make the blockade effective.

¹ For the correspondence between the secretary and the ministers see *Diplomatic Correspondence*, 1862, 3-304, *passim*, between the consuls and the Foreign Office, *Sessional Papers*, 1861, lxxv, 595 *et seq.*; 1862, lxxii, *passim*. For that of the blockading officers, *Official Records of the Union and Confederate Navies*, vols. 1 to 20. All references to this work are to the first series. Hereafter it will be cited as *O. R. N.*

² *O. R. N.*, iv, 356.

May 4, the British merchantman, *Hiawatha*, bound from Liverpool to Richmond with a cargo of salt, was boarded and warned off by Pendergrast, but her captain proceeded despite two shots in her direction from the *Cumberland*.¹ Next day the consul at Richmond wrote Lord Lyons asking instructions. Might he, without breach of neutrality, correspond with the commander of the blockading squadron? Could he clear the two British vessels then in port, for Britain, with cargoes partly owned by British subjects? The *Hiawatha* was lading at City Point, under the impression that she would be allowed to depart; he had told the exporters that he thought no objection would be made to her sailing in ballast, but they declined to permit that, as she had brought only a nominal freight, hoping to secure a remunerative cargo. Lord Lyons instructed him to do whatever would best subserve British interests, taking care not to arouse the suspicions of the local authorities if he communicated with Pendergrast. Meanwhile the minister requested permission for the *Hiawatha* to leave. Mr. Seward referred this to the Secretary of Navy, who replied that she might do so within fifteen days from the institution of the blockade, with or without cargo.

Accordingly, on May 11 Lord Lyons sent a circular to all British consuls in the South, informing them that the vessels of neutrals might have this time, regardless of the date of shipment of cargo. Similar instructions were sent to Admiral Milne, commanding the British vessels in American waters.

Another British schooner, the *Tropic Wind*, began lading at Richmond, on May 13. She sailed next day and was captured by the U. S. S. *Monticello*, near the

¹ *O. R. A.*, I, li, pt. ii, 63-5.

mouth of the James on the 21st. The libel was heard at the June term of the United States District Court at Washington, Judge Dunlop presiding. Amongst the papers submitted was a certificate of the consul at Richmond, stating that he received authoritative information on May 11, and at once notified captains of vessels in port to depart within fifteen days from May 2. Judge Dunlop decided (June 13) in view of Pendergrast's proclamation having appeared in the Norfolk and Baltimore papers, that both vessel and cargo were liable to seizure. On the 17th, he allowed a postponement, to receive further evidence. Lord Lyons was notified, July 1, that the ship had been released.

The Foreign Office issued a circular July 13, to "Consuls in North America" directing them to send at every opportunity accurate information about the maintenance of the blockade. Lord Cowley had informed the Foreign Office, July 4, that the French Government would not admit the legality of closing Southern ports by *decree*. Lord Russell forwarded this with his approval to Lord Lyons, instructing him to co-operate with M. Mercier. When Congress passed an act authorizing collectors of customs to have their offices on shipboard off ports seized by the Confederates, and confirming the blockade, the two ministers consulted and M. Mercier went to Mr. Seward to communicate his instructions, informing him that Lord Lyons's were similar. It was just about this time that Mr. Bunch was instructed to approach the Richmond government, with what result we have seen. In October Lord Lyons secured permission for British consuls to have official intercourse with him and Lord Russell, by means of British men-of-war entering the blockaded ports, provided that such vessels should carry no passengers, except diplomatic or consular agents, and

none but official correspondence. The vessels of one nation might accommodate the consuls of another. This was later restricted to those consuls who were not engaged in trade; Mr. F. W. Seward requested Lyons so to instruct commanders of British vessels.¹

Lousada, consul at Boston, had notified Lord Russell on May 3 that fifty vessels had been dispatched to the Southern coast. Soon thereafter the consuls began to notify the Legation and the Foreign Office of the establishment of the blockade. Virginia, we saw, was blockaded in April. Bunch wrote that the *Niagara* appeared off Charleston May 11; up to the 15th no vessels had been *permitted* to enter, but a British vessel had slipped in. When asked why he had violated the blockade, the captain said he had received no warning, though the consul understood that several ships had been warned off. Accordingly Mr. Bunch went out to the bar and explained the matter to Captain McKean of the *Niagara*, who said the vessel would be allowed to leave. On the 13th, Bunch asked that several British vessels which were expected might be allowed to land for instructions. This was refused, but Captain McKean offered to deliver to the masters any unsealed letters if they contained nothing objectionable.² He also told Bunch that he expected re-inforcements, and that twenty days from May 10 would be the limit for vessels to depart.³

On the 17th Mr. Bunch wrote Lord Lyons that the *Niagara* had disappeared on the 15th, and that several vessels from foreign and coastwise ports had entered during her absence. He added, "I would be permitted also

¹ *O. R. N.*, vi, 504. *Dip. Cor.*, 1861, 253.

² *O. R. N.*, iv, 176.

³ *Charleston Courier*, May 14.

to remark that the blockade is utterly ineffective."¹ Accordingly Lord Lyons told Mr. Seward he supposed a new notice would be given if the blockade were again intended. Before Mr. Seward replied Mr. Bunch sent a complaint from the Charleston agents of a London firm. These gentlemen (Confederates) claimed that they were suffering injustice, as two vessels consigned to them had been turned back by the *Niagara*, while ships consigned to other parties had come to the city and got good cargoes. They wanted the British government to protest, so as to establish a claim for an indemnity. Of course the fact that their vessels had failed to run the blockade did not present itself to Lord Lyons in the light of a claim for indemnity. On the 27th he received Mr. Seward's reply, based on the report of the Navy Department, that the blockade had not been remitted, abandoned or relinquished. He also said that the *Harriet Lane* was ordered to replace the *Niagara*, but owing to an accident, did not arrive until a day or so after the latter left Charleston. He held that temporary absence did not impair the blockade which was considered effective from May 11th.² But on the 28th Bunch informed Lord Russell that so far no vessel had appeared to replace the *Niagara*, no new British vessels had arrived, but all in port had sailed. The following day he announced the arrival of the U. S. S. *Minnesota*. Lord Lyons sent him a copy of Mr. Seward's dispatch, to which he retorted that in his opinion the blockade was a travesty, because between May 13th and 28th four British, one American and one Norwegian vessel had arrived, and all save the

¹ *Sessional Papers*, 1862, lxii, 706.

² The commander of the *Niagara*, however, wrote the Secretary of Navy that he "regretted it was deemed necessary to raise the blockade of Charleston." *O. R. N.*, iv, 176.

Norwegian had gone out again with cargoes. Furthermore, sailing vessels and steamers from Carolina, Georgia and Florida ports arrived daily, the *Minnesota* being utterly unable to reach them on account of her draught. Even two privateers were expected to leave in a day or so.

Late in May the *Eliza Catherine* came in from the Bahamas, unmolested; she loaded with rice and lumber, started out and was sent back by the *Minnesota*. Consul Bunch had a conference with Flag-Officer Stringham and obtained permission for her to proceed on the strength of Captain McKean's instructions.¹ June 10th, Stringham boarded the *Edward* off St. Helena; the mate said the captain was ashore, but the brig was bound for Liverpool and had been twice warned off. Stringham was suspicious, but as the ship's papers were with the master, he did not feel justified in seizing her, so contented himself with ordering her to put to sea, headed for any foreign port, or any American port north of the Virginia capes. When he returned to Charleston next day, Mr. Bunch and the master came to inquire about the *Edward*; Bunch expressed himself as satisfied with the action of Stringham.²

Still irritated by Seward's dispatch, June 12th, Bunch wrote Lord Russell substantially what he had told Lord Lyons, adding:

The Secretary of State of the United States is under the impression that the place of the *Niagara* was supplied by the *Harriet Lane* after, at furthest, the delay of a day or two. Without desiring to impugn the correctness of Mr. Seward's statement to a greater degree than may be necessary to estab-

¹ Cf. *supra*, p. 51.

² *O. R. N.*, v, 692, 714, 726.

lish the truth, I will only remark that neither the *Harriet Lane* nor any other vessel was ever in a position to maintain the blockade, as the foregoing facts will clearly prove. But whatever may have been the intention of the government of the United States, it is perfectly clear that the blockade was utterly and entirely ineffective and null for nearly fifteen days. My colleagues of France and Spain have so reported to their respective governments, so that I am not alone in my opinion.¹

He wrote again, July 25, that since June 12 various United States ships had replaced each other, usually only one at a time being present, though once there had been four. At that writing there had been none for twenty-four hours, despite good weather. The coasting trade went merrily on, as was shown by a list of fifty-one vessels arriving between May 30 and July 25, bringing rice, cotton, cattle and naval stores. He enclosed affidavits of two captains whose vessels had run the blockade, showing that the port could be entered by numerous channels. Also he gave the names of five privateers that had left port since the *Minnesota's* arrival. The same day he sent copies of a proclamation of Pendergrast, of July 13th, announcing that he had sufficient force to make effective the blockade of Virginia and North Carolina. A copy of this was sent the Confederate commander at Wilmington, from whom the vice-consul had obtained it. He, in turn, forwarded it to Mr. Bunch with a list of ninety-two vessels which had arrived at and cleared from Wilmington between May 1st and July 25th; five had entered and sailed since the issue of the proclamation. They were of every class, and from Northern, Southern and foreign ports.

Early in August Mr. Bunch forwarded an affidavit from

¹ *Sessional Papers, loc. cit.*, 718 *et. seq.*

a master showing how easy was ingress and egress at and between Charleston and Fernandina, 200 miles apart. The deponent alleged that he saw no blockading vessels except off Tybee and Charleston. A few days later he sent affidavits that Georgetown was not blockaded but was entered regularly; egress from Charleston was likewise easy. Also that the three blockaders off Charleston had apparently ignored (about 6. A. M.) a vessel flying Confederate colors. Ten days later he wrote that there was no change: the coasting trade was in full force; a British schooner had taken lumber from Wilmington to the West Indies, returned to Georgetown with coffee, and was ready to sail with rice for Santa Cruz, where her return cargo was already purchased, so sure was she of being able to deliver it.

When the U. S. S. *Wabash* arrived in September, Captain Mercer, her commander, received from Pendergrast a letter from Bunch to the commander of H. B. M. S. *Racer* and an open letter to the master of the British ship *Palerinus*. On the 5th Mr. Bunch visited the *Wabash*, ostensibly for the purpose of apologizing to Pendergrast "for hoisting the secession flag on board the steamer which bore the flag of truce, soon after she stood away from the *Roanoke* [one of the blockaders] to go into Charleston." His real purpose, Mercer thought, was to learn why the *Sarah Starr*, a British vessel, had been captured. Mercer told him that she was captured because she had not a proper register. He told Mr. Bunch he would deliver the letters received because his superior had ordered it, but he "considered such a proceeding irregular and would not deliver any such"¹ upon his own responsibility. Mr. Bunch said that Stringham,

¹ *O. R. N.*, vi, 254.

McKean and Pendergrast had all delivered his dispatches to British naval officers, and Mercer agreed to do likewise until he could hear from Stringham, if the consul would accompany each letter with a note saying there was nothing in it detrimental to the interests of the United States. He positively declined to deliver anything to merchantmen.

During September Mr. Bunch sent three dispatches about the blockade, dated the 4th, 14th and 30th, respectively. That of the 4th stated that privateers and blockade-runners entered Charleston almost at will, being occasionally ineffectually chased by blockaders; and that two British and West Indian steamers had entered Beaufort (N. C.), with salt, lead and iron. He enclosed a certificate of the vice-consul at Wilmington indicating that during the latter half of August thirteen vessels had entered with corn and naval stores and eleven had cleared. In his dispatch of the 14th, he remarked that no difficulty was experienced in entering Charleston, though two men-of-war were then on duty; no pretense of a blockade existed along the inlets from Charleston to Savannah; in the last two weeks Wilmington had received four foreign vessels; Beaufort was closely watched by the *Susquehanna*. On the 29th, he received a copy of the following, sent by Lord Lyons to all the Southern consulates :

I am directed by Lord John Russell to call your attention to the extreme importance of obtaining all the particulars possible respecting the blockade of Southern ports. . . . For the sake of convenience these points are here stated in the form of questions.

1 : Has ingress been allowed by the blockading squadron, after the first establishment of the blockade, to any and what vessels, knowingly and wittingly?

2: Has egress been allowed, knowingly and wilfully, by the blockading squadron, after the first establishment of the blockade, to any and what vessels, with cargo laden after the blockade and in derogation of the fifteen days of grace?

3: Have intermissions of the blockade been caused (A) by the blockading force being wholly and deliberately withdrawn and sent elsewhere by superior orders? (B) by weather? or (C) by chasing vessels endeavoring to break the blockade, or other vessels generally?

4: Has the force on the spot, from local conditions, number and class of cruisers, and so forth, been, when actually present (and if so for what time and in what respect?) adequate to maintain an efficient blockade, or to cause obvious danger to those attempting to break it?

You will take every opportunity of forwarding information to the Foreign Office and this Legation on the subject of the blockade.¹

The consul replied next day:

1: Ingress into the port of Charleston has certainly been allowed at all times since the first establishment of the blockade, to steamer transports of the Confederate States, which have come in from the surrounding coast with the Confederate flag flying, in full sight of the blockading squadron, without even an attempt being made to capture them. Similar ingress has not been allowed to any other vessels.

2: With the exception of the transports mentioned above which have been laden with guns, men and stores, no egress has been allowed knowingly and wittingly to any vessels from this port.

3: As regards intermissions of blockade (A) I cannot say that the blockading ships have been withdrawn by superior orders, as I have no means of knowing. They have certainly been out of sight of the town on many occasions. (B) There has been no bad weather until four days ago, when both the

¹ *Sessional Papers, loc. cit.*, 745.

Wabash and the *Vandalia* were compelled to run out to sea. (C) I am not aware of any absence of ships caused by chasing vessels.

4 : It has been adequate to cause obvious danger to large vessels, but totally inadequate to prevent either the ingress or egress of smaller vessels, by which I mean vessels of from fifty to five hundred tons, and drawing less than ten feet of water.

The above remarks apply to Charleston. Of the ports between it and Savannah, I can safely say that there has been no blockade at all. Vessels of various sizes . . . have been brought in in safety. Schooners and brigs have arrived from and sailed for the West Indies, with cargoes, ever since the nominal commencement of the blockade. Of the blockade of North Carolina, I can only say that it has scarcely existed at all . . . Off Wilmington, up to two or three days ago, there has been no blockading vessel except the *Daylight*, on July 20th, which vessel went away on the 25th. At Beaufort the blockade did not begin until the 6th or 7th of September.¹

Paragraph 4 probably explains the apparent indifference of the blockaders mentioned in the first two sections. Between Fernandina, Fla., and Georgetown, S. C., the numerous shallow creeks and inlets, more or less hidden by sandy islets, marshes and islands, permitted a trade which the men-of war, with their greater draught, could not prohibit.²

In another dispatch³ of the same date, Mr. Bunch informed Lord Lyons that the reason there were no arrivals of foreign vessels between May 18th and 27th, was not the presence of any blockading vessel, but the fact that the business season was over for the year. He

¹ *Sessional Papers, loc. cit.*, 785 *et seq.*

² See the topographical maps of the Southern Coast in the atlas of *O. R. A.*

³ *Sessional Papers, loc. cit.*, 787.

enclosed a list of coasting and South American vessels, forty-one in number, arriving between July 26th and September 21st, bringing food supplies, coal, cattle and prisoners. This testimony of Bunch's was corroborated by a dispatch from Consul Archibald, dated New York, October 29th, showing that privateers were constantly issuing from Charleston and capturing merchant vessels. Mr. Bunch had reported on the 15th that two to four blockaders were in sight but were ineffective, since vessels got to sea over the bar and through the main channel; an affidavit was enclosed about a vessel which put out through the Northeast channel, sprung a leak and returned by an inlet, at no time having seen a blockader. November 5th, he wrote: "Small vessels arrive almost daily while larger ships incur risk by approaching the coast . . . The blockade of North Carolina has undoubtedly become more stringent . . . Beaufort continues to be closed, and Wilmington has been carefully guarded. There are two British vessels in each of the above ports, which entered when there was no blockade beyond a paper one."¹ Enclosed was a list of twenty-five vessels entering Charleston during October, all in the coasting trade, laden with cotton, lumber, hides, iron and food-stuffs. November 20th, he wrote that a British schooner had just made a trip from Wilmington to the West Indies and returned without seeing a United States ship. He was firmly convinced that "the ports of Newbern and Beaufort in North Carolina are blockaded only because the two British vessels are known to be there; the other ports seem to be treated with the disregard of 'effectiveness' that has characterized the blockade of this coast since its commencement."² Flag-Officer

¹ *Sessional Papers, loc. cit.*, 810.

² *Ibid.*, 812.

DuPont, commanding the South Atlantic Squadron, wrote Secretary Welles, December 4, 1861, that the blockade was so rigorous that even the fishermen had been driven in, and Charleston was deprived of its usual supply of fresh fish.¹ Savannah he put in the same category, but added that it was impossible to prevent vessels slipping out in a fog. Yet on the 9th Mr. Bunch mentioned three large vessels slipping out of Charleston with naval stores and cotton; the privateer *Sallie*, to which Archibald had referred, had sent two prizes to Charleston, and returned herself in safety. The Port Royal expedition had made more effective the blockade of the coast south of Charleston, which city, however, was still accessible from the northeast. Wilmington had been for several days without a blockader, so that the two British vessels, before mentioned, had sailed for England with naval stores, while one vessel had entered. Beaufort was still blockaded, "owing to the presence of the British ships." Subjoined was a table of thirty-five coasting vessels, laden with foodstuffs, zinc, cotton, *etc.*, that had arrived at Charleston during November.

Savannah was blockaded by the *Union* May 28th. On the 30th the Russian consul and the British acting-consul chartered a tug and went down to the bar to inquire. Not perceiving the British flag at the masthead and the flag of truce at the stern of the tug, the *Union* fired two shots in her direction, whereupon she tacked so as to display her colors and the firing ceased. The commander of the *Union* informed the consuls that the blockade commenced May 28th, from which date neutral, but not Confederate, vessels had fifteen days to depart, but no vessels of any nation (except neutral men-of-war)

¹ *O. R. N.*, xii, 380.

might enter; he added that the squadron blockading Charleston and Savannah consisted of four vessels. This information was forwarded to Consul Molyneux, then in London, who at once took it to the Foreign Office. Lord Lyons was informed, June 5, by Acting-consul Fullarton that the *Union* had disappeared on the 1st, since which the entrance had been entirely unobstructed. Lord Lyons asked if there had been any blockade from May 12 to 18. Fullarton replied that there had been none, as five British vessels arrived during that time without seeing any United States ships. He reported, July 22, that two vessels were constantly on duty; only one ship had slipped in since the re-establishment of the blockade, June 10. August 7, he reported that the privateer *Jeff Davis* had sent a prize into Brunswick, but as there was no admiralty court there, she was sent on to Charleston. Savannah was still closely blockaded, though the coast as far south as Fernandina was accessible. He reported, on the 22d, several cases of blockade-running, all by means of inlets too shallow to admit cruisers. He sent an account on the 27th of the activities of the *Jeff Davis*, which was sending prizes into Darien, Fernandina and St. Augustine, as the blockade along this coast was utterly inadequate, according to the masters of several blockade-runners, who "laugh at it as at present maintained,"¹ though they entered not by the main channel, but by creeks. October 11, he said intermissions had been frequent since September 1, sometimes lasting a week; so far as he could learn neither weather nor chasing was responsible for them. During one, a steamer entered, bringing information about the number of inlets, harbors, channels, *etc.*, which were accessible to coasting

¹ *Sessional Papers, loc. cit.*, 722.

schooners, while the men-of-war could only cruise fruitlessly along the coast. From the very first, communication between Savannah and the St. Johns river ports had been interrupted.

Consul Molyneux, reporting the capture of Port Royal by the Union forces in November, said that for weeks previous the blockade of Georgia was inadequate, as six British and eight Confederate vessels had entered and departed in safety. November 30, he reported the occupation of Tybee Island at the mouth of the Savannah river, which would probably make the blockade more effective. But a week later he reported four cases of blockade running between November 26 and December 2; two had seen no blockaders, two had been chased.

Northeastern Florida, as noted above, was not at first effectually blockaded, but between March 1862 and March 1864, it was occupied and abandoned several times by Federal forces.¹ June 27, 1861, Lord Lyons sent a newspaper clipping relative to the blockade of Key West, which is confirmed by the reports of the Federal officers and of the vice-consul there. Flag-Officer Mervine, of the Gulf Squadron, declared a blockade on June 8; the 11th, he relaxed it so far as to permit "legitimate trading" with "the ports of the loyal states" and the West Indies, so long as confined to "lawful objects of commerce" and under such restrictions as might be imposed from time to time by the naval authorities.² As Key West remained in Federal hands, this condition was of course complied with. Pensacola had been blockaded May 13, and, the British minister thought, effectively.³

¹ Fairbanks, *Florida*, 213. Norton, *Handbook of Florida*, 32. *O. R. N.*, xii, 403, 470, 597.

² *O. R. A.*, 1, i, 429 *et seq.*

³ *London Times*, June 11, 1861. *O. R. N.*, iv, 168.

Lord Lyons was notified, May 7, by the Acting-consul at Mobile that the *Powhatan* was said to be at the entrance to the harbor, but he had received no official notification; only four British vessels were in the harbor and they would leave that week. He had sent a request to the commander of the *Powhatan* for leave to have towboats take the vessels to sea, and he and some gentlemen of Mobile went in person to see Captain Porter, who told them they might have two days still to leave, and as he would communicate this personally to the pilots, a written notice was unnecessary. Some of the newspapers were of the opinion that he was trying to "scare" the ships to sea and "wouldn't dare write such conditions to a British consul,"¹ nevertheless on the 29th the consul sent Lord Lyons a copy of Porter's consent, urging that the consul get British ships to sea at once.² October 14, the consul reported that a sloop laden with turpentine had passed out without molestation; on the 31st, a British sloop arrived from Havana with coffee and tobacco, "in the face of any blockade;" November 30, another turpentine schooner went out and was chased in vain. January 23, 1862, he complained to Captain Powell of the U. S. S. *Potomac*, off Mobile, and Flag-Officer McKean, commanding the Gulf Squadron, that the former had fired on a British schooner at anchor, compelling the crew to flee for their lives. He demanded the restitution of the vessel. Captain Powell denied this accusation, affirming that a vessel had run ashore as his gunboat approached, and was immediately deserted by her crew. When he sent a boat to examine her, it was fired upon from the shore, which protracted the work of getting the schooner afloat. She had no name

¹ N. O. *Delta*, May 31.

² O. R. N., iv, 185.

displayed, but a Confederate flag was secreted in a sack of coffee, from which he concluded that the vessel was making an improper use of the British flag, which was hoisted only after the ship was beached. Flag-Officer McKean thought the best course was to let the admiralty courts investigate. In his official report he more than indicated a doubt as to the consul's truthfulness.¹

The U. S. S. *Brooklyn* appeared at Pass à l'Outre, at the mouth of the Mississippi, May 27, and announced the blockade to the vessels lying at the bar. The consul at New Orleans had not received official notice as late as the 29th, but as he had heard of it from Washington, he had put a notice in the papers (May 18th) saying he was informed that it would be instituted about the 25th, and notifying ship-owners of the customary conditions.* Because of low water, thirty vessels with cargoes valued at £1,000,000 were detained, the towboat company having withdrawn its tugs from the bar, for fear of capture. June 2, Consul Mure, three other consuls and the manager of the company went down to see the authorities. Captain Poore, of the *Brooklyn*, said he would take the most liberal view possible of his instructions, but advised them to proceed to Southwest Pass, where Captain Porter was in command. The latter informed them that the blockade had been officially announced May 26, therefore June 10 was the limit for vessels to clear from New Orleans, and they must pass the bar by the 14th. He thought some of the towboats had been turned into privateers, whereupon he was given a list of those employed by the "Association." The consuls presented

¹ *O. R. N.*, xvii, 57, 62.

*The files of the New Orleans papers to which I had access lacked certain issues. This letter was copied for me from the *Delta* of May 18 by Mr. William Beer of the Howard Memorial Library.

the case of vessels which had been detained several weeks, and a slight extension was granted, provided efforts were made at once to move them. The tugs at once resumed work, and by June 18 they could report that all British vessels had gotten safely to sea. The blockade was rigidly enforced, and business stagnant. July 30, in response to the Foreign Office circular of June 13, Mure said it was difficult to obtain information about what was happening at the Passes, as the Confederate military authorities had forbidden communication, but he had reason to believe that the *Powhatan* and *Brooklyn* had been reinforced by gunboats, which patrolled the coast from Mobile to the Mississippi. There had been no interruption of the blockade and only one vessel had succeeded in eluding it,—the C. S. S. *Sumter*. Small schooners were arriving at Berwick Bay (Atchafalaya) with goods from Texas and Cuba. September 16, the acting-consul sent Lord Russell a circular issued by Secretary Memminger, “in view of the inefficiency of the blockade,” throwing open the whole Southern coast to foreign vessels, and instructing customs officials to allow them to discharge at any point convenient, after reporting to the nearest collector. In the same dispatch the consul mentioned the arrival at Grand Caillou of a British vessel from Havana. In reply to Lord Lyons’ circular of August 14, he reported, October 22, that two or three small vessels, after long delay, had slipped out through the bayous; so far as he could learn, no vessel had been wittingly allowed to enter or depart. Early in the month an attempt by the blockaders to erect a fort at the head of the Passes was frustrated by the Confederates. In the light of all the information obtainable, he considered the blockade effective.

As late as July 1, Lord Lyons could report that Texas

was still open, but on the 3rd, the consul at Galveston announced that the day before the U. S. S. *South Carolina* (a name to add insult to injury) had arrived and established a blockade. He reported July 31, that it was still maintained, though its efficacy was open to doubt. Pass San Luis at the western end of the island was still open, and practicable for vessels drawing nine feet; there was an additional channel open to vessels of lesser draught. The merchants of Galveston asked him to request Lord Russell not to use this information in a way that would lead to more effective measures, as this means of ingress had been used to obtain medicine "and other necessities of life."¹ Replying to the Foreign Office circular, the consul said (August 8) that the *South Carolina* had just been reinforced. Thus far, he added, the blockade had prevented only the import of manufactures from the Eastern States, and Northwestern agricultural products, which used to come by New Orleans. Attached was a list of five vessels entering and eight leaving, between July 2 and 28; further, small boats kept up constant communication with Sabine and New Orleans, by the bayous, inlets and creeks. During the first three days of the blockade, eight pilot boats and four coasting schooners were captured—four more the next week; none of these had received notification of the blockade, but every vessel that with knowledge of it, had attempted to run either in or out had succeeded.

Returning to Virginia we find nothing of interest in consular circles between the case of the *Tropic Wind*² and July 11. Then the acting consul at Richmond informed the British minister that one Atlee, a Northerner

¹ *Sessional Papers, loc. cit.*, 795.

² *Cf. p. 49, supra.*

who had lived in Virginia for a long time, having a contract to supply the local telegraph company with insulators, got permission from Secretaries Chase and Cameron to bring in the necessary clay and potash by Harpers Ferry. Finding this route impracticable, he proceeded to Old Point Comfort, where General Butler gave him a pass through the blockade, but confiscated his other papers. In Richmond he was arrested on suspicion of disloyalty but was discharged by the court. About the same time the consul at Baltimore reported that a vessel laden with provisions had gone unmolested down the bay and up the Rappahannock to Fredericksburg. Replying to the Foreign Office circular, the Richmond office reported that the blockade became effective April 30; one frigate at the entrance to Hampton Roads was sufficient to control traffic with Norfolk and the James River ports. Other vessels were stationed between Old Point and the Potomac. Since the official limit (May 15) there had been no ingress or egress to Richmond. North of Old Point the blockade was not so effective: the *St. Nicholas*, captured by the Confederates, passed the vessels at the mouth of the Rappahannock and delivered three prizes at Fredericksburg. The vice-consul at Norfolk reported that the squadron consisted of five men-of-war and five armed merchantmen. November 12, Acting-consul Cridland replied to Lord Lyons' circular of August 14. When he had received this dispatch, being seventy-five miles from the coast, he gave Secretary Hunter a copy and requested his assistance. Secretary Memminger sent copies to all the collectors, and a batch of replies was received at the consulate November 12, from Beaufort, Wilmington, Charleston, Savannah, Brunswick, St. Marks, Fernandina and Mobile. These were summarized as follows :

1 & 2: Ingress and egress had been had but the collectors did not know whether it was with the knowledge and consent of the blockading squadrons.

3: Frequent intermissions, of varying duration, had occurred, from causes unknown to the collectors. For days at a time, there would be no vessel in sight.

4: "They all affirm positively that at no time has the enemy's force been sufficient to maintain an efficient blockade."¹

All through this year long lists of evasions were sent the Foreign Office by the Confederate commissioners. Lord Russell seems to have ended consular activities in this line by a dispatch to Lord Lyons, February 15, 1862. It was written after the Admiralty Office had sent him a report from the commander of H. B. M. S. *Racer*, which had inspected the Carolina ports. The commander thought three men-of-war should be sufficient to blockade Charleston, but found that vessels left that port every few days; there was a vessel stationed off Wilmington, but ingress and egress were had frequently. "It would thus appear that the blockade, either intentionally or through want of ordinary vigilance, is not effective."² This was confirmed by the newspaper clippings sent by consuls in the northern cities. That the testimony of the consuls, commissioners and British naval officers was not wholly biased is shown by the official correspondence of the Federal naval authorities, since published, and the editorials of the New York *Herald*, which from July, 1861, to September, 1862, contained frequent criticisms of the blockade and exhortations to Welles to make it effective. Mr. Bennett thought, July 15, 1861, that un-

¹ *Pickett Papers*, also see *Sessional Papers*, *loc. cit.*, 816 *et seq.*

² *Ibid.* 820 *et seq.* Cf. Davis, *Rise and Fall*, ii, 374.

less it were rendered effective by fall, England and France would be delighted to declare it invalid. Naval officers were frequently appealing for more ships, if they were expected to maintain a real blockade.¹ In August, Stringham complained of his inadequate force, and told of the *increasing* coastal trade from Virginia to the Carolinas.² General Dix had a similar opinion³ and as late as December 14, Welles sent DuPont an account of a vessel that had run the blockade at Charleston seven times.⁴

The consuls only rarely knew of a vessel's being turned back and not always of the captures; so naturally they reported few cases, but the lists of captures sent by the blockading squadron compare unfavorably with the lists of escapes sent by various officials.⁵ The evidence summarized above, it appears, might have warranted Lord Russell in pronouncing the blockade of the Carolina coast at least ineffective, had he really desired to do so, and there is reason to think that France would gladly have joined in such action. Instead, Lord Russell wrote Lord Lyons as follows:

It appears from the reports received from Her Majesty's naval officers, that although a sufficient blockading force is stationed off those ports [Charleston & Wilmington], various ships have successfully eluded the blockade; a question might

¹ *O. R. N.*, vi, 281, and iv and v, *passim*. Levi thought (in 1872) that the blockade was never thoroughly effective. See *History of British Commerce*, 423.

² *Ibid.* vi, 66.

³ *Ibid.* 468.

⁴ *Ibid.* xii, 401.

⁵ In this connection see *ibid.* iv-vi, xii, *passim*, *Sess. Papers*, 1862 lxii, 1864 lxii, *London Times*, and *Index*, 1861-3, *passim*, N. Y. *Albion*, 1861-2, N. O. *Picayune*, Jan. 13, 1864, *Charleston Courier*, Feb. 10, 1862, *O. R. A.*, 2, ii, 546, *Capers*, *Memminger*, 348. These contain lists of escapes, of captures, complaints of inefficiency, appeals to "law of nations," etc.

therefore be raised as to whether such a blockade should be considered as effective.

Her Majesty's Government, however, are of opinion that, assuming that the blockade is duly notified, and also that a number of ships is stationed and remains at the entrance of a port, sufficient really to prevent access to it or to create an evident danger of entering or leaving it, and that these ships do not voluntarily permit ingress and egress, the fact that various ships may have successfully escaped through it, (as in the particular instances here referred to), will not of itself prevent the blockade from being an effective one by international law.

The adequacy of the force to maintain a blockade being always, and necessarily a matter of fact and evidence, and one as to which different opinions may be entertained, a neutral State ought to exercise the greatest caution with reference to the disregard of a *de facto* and notified blockade; and ought not to disregard it, except when it entertains a conviction, which is shared by neutrals generally, having an interest in the matter, that the power of blockade is abused by a State either unable to institute or maintain it, or unwilling, from some motive, to do so.¹

With the *Trent* affair, Bunch's *exequatur*, and Mr. Adams's continual questions about vessels supposed to be building for the Confederacy, even were Lord Russell not disposed to strain a point in favor of the United States, he was hardly anxious to give Mr. Adams a new point of attack. Perhaps most of the English people approved the middle ground taken by Lord Stratford, in a speech on March 10, 1862.² He was of the opinion

¹ *Sessional Papers, loc. cit.*, 821 *et seq.* He was of same opinion Aug., 1863. *Cf. ibid.* 1864, lxii, 451.

² *London Times*, March 11. For a concise summary of the British position, see Bernard, *Neutrality of Great Britain*, 246, and the *Times*, Mar. 8, 1862.

that the evidence submitted was conclusive as to the inefficiency of the blockade, yet the Lords, he thought, before taking a position, should request such further correspondence as the Government had, as there might be evidence to rebut that of the consuls and naval officers, so justifying proceedings which the "Government at Richmond" might consider adverse.

Of course this policy of delay served to allow the United States to make the blockade really effectual. In April, 1862, Admiral DuPont was able to say that however true Bunch's statements may have been at the beginning of the blockade, they were no longer applicable to his territory.¹ Two months later the commander of H. B. M. S. *Racer* told Commander Marchand, of the U. S. S. *Adger*, that Bunch said no vessels had succeeded in getting in or out for some weeks.²

In November, 1861, Lord Lyons sent to the Foreign Office newspaper clippings announcing the departure of the "stone-fleet"³ for the South. He thought the legitimacy of this measure depended on the permanency of the injury to the harbors. Lord Russell instructed him to protest against it as unjustifiable and barbarous. The despatches of the consuls announcing the arrival of the stone-fleet at Charleston and Savannah were received the day after the Liverpool Shipowners's Association appealed to the Foreign Office to oppose this measure, so Lord Lyons was instructed to protest again. Mr. Seward replied that it was merely a temporary measure, not intended for the main channels, but only for the auxiliary inlets; that the obstructions would be removed after the war was over, as it was only a method of rendering the

¹ *O. R. N.*, xii, 773.

² *Ibid.*, xiii, 151.

³ *Annual Register*, civ, 214. *Sessional Papers*, loc. cit., 121, 145. *O. R. N.*, xii, 207-552, *passim*.

blockade more efficacious. This seems to have ended the matter, and the "stone-blockade" was rather disappointing in its results,¹ though the Confederates could probably have understood the feelings of the Spaniards after Hobson's exploit.

The correspondence seems to show that Mr. Bunch was the most industrious if not the most efficient of the consuls, and that he was not alone in his sympathy for the South. A clergyman wrote the governor of New York, in October, 1861, that the consul at New Orleans was interested in a blockade-runner, then lading at Montreal, where the deputy consul-general was supposed to be helping him.² On another occasion the captain of the blockade-runner *Adelso* swore that the vice-consul at Wilmington was one of the consignees of his cargo.³ Both of these complaints were items in more important matters, and elicited little, if any, attention. Three other consuls had rather important relations with the blockade, which will be discussed in subsequent chapters.⁴ Lord Lyons's success in procuring permission for British war vessels to have access to the consuls was a source of much benefit to these gentlemen, who not only sent their dispatches thus, but utilized the vessels for their journeys when on leave, or when visiting one another.

¹ Bernard, *op. cit.*, 283-6. But *cf.* Davis, *op. cit.*, ii, 374.

² *O. R. A.*, 2, ii, 123. Also see *O. R. N.*, xvi, 543, 649.

³ *Ibid.* 432.

⁴ *Cf. infra*, vi, viii and x.

CHAPTER IV

THE CONSULATE OF RICHMOND

THIS consulate included what now constitutes Virginia and West Virginia; George Moore was consul, with vice-consuls in Richmond, Norfolk and Fredericksburg. F. J. Cridland, at Richmond, was an efficient officer, and seems to have had the esteem of the people of the consulate, and the confidence of Lord Lyons; but by lack of frankness he antagonized Mr. Benjamin and never succeeded in placating him. Meyer Meyers, at Norfolk, was also Dutch consul, which perhaps accounts for his apparent inactivity in British matters: he is referred to only as receiving instructions, forwarding dispatches, and giving Cridland some information about the blockade. Of course after the Federals occupied Norfolk in May, 1862, it was easier for him to communicate directly with Lyons and Russell than by the Richmond office, while as a British official, he had no relations with the Confederate government.

Peter Goolrick, at Fredericksburg, had a unique experience with the Federals, and as he had very little official contact with the Confederate authorities, his case may be disposed of here. In fact his superior at Richmond seems not to have been aware of his existence, as his name is not in the list of consular officials sent by the Richmond office to Secretary Benjamin.¹

¹ *Pickett Papers*. Goolrick may have been removed by this time (Sept., 1862) but I find no evidence of it.

Mr. Goolrick had been appointed vice-consul for "the port of Fredericksburg and the district of Tappahannock" in 1853, by Consul G. P. R. James.¹ In May, 1862, a British subject deposited a thousand barrels of flour with Mr. Goolrick, to be sold or held for a rise, at the latter's discretion. June 2, General Reynolds, of the Federal army, seized the flour in spite of Mr. Goolrick's formal protest. A few days later Reynolds was succeeded by General Doubleday, a file of whose soldiers forcibly entered Mr. Goolrick's dwelling, and searched the entire premises for firearms, *etc.* Finding none, they departed, taking the British flag from the door and replacing it with an American one with a sentry beside it. Whereupon Mr. Goolrick "closed his office and suspended his functions as vice-consul." He complained to Mr. Stuart, then chargé d'affaires, asserting that Her Majesty's subjects in Fredericksburg needed consular aid and protection, which, under the circumstances, he could not give. Mr. Stuart at once approached Mr. Seward, who dispatched an agent to investigate, while he remarked to Mr. Stuart that he had never known there was a consular office at Fredericksburg. Really, he added, he saw no need for a separate office at a "comparatively small inland river port," which was only about sixty miles from Richmond and Washington, and the United States "could not be expected to guarantee forever, consular privileges in time of war to agents whose character is entirely unknown to them."² Mr. Goolrick had occasionally corresponded with Mr. James and his successors, but the United States never had any official notice of his position. Furthermore, he had been repre-

¹ The documents in Goolrick's case are in *Sessional Papers*, 1863, lxvii, 40, and *Dip. Cor.*, 1861-2, pt. ii, 263 *et seq.*

² *Dip. Cor.*, *loc. cit.*, 263.

sented to the Secretary of State as a "traitorous citizen," and under all the circumstances he doubted whether Mr. Goolrick had any claim on Great Britain, or Great Britain on the United States, for executive interposition; nevertheless, if the flag, archives or any official possession had been taken, it would be returned. If, continued Mr. Seward, Mr. Stuart thought it important to have a vice-consul at Fredericksburg, he might appoint any British subject or any loyal American citizen; if that were not convenient and Mr. Stuart preferred to have Mr. Goolrick continue, Mr. Seward would so order if the military authorities considered it consonant with public safety. He would also appoint a commission to seek the missing flour. Mr. Goolrick, who had been in Washington on parole, was released and allowed to go home. Mr. Stuart requested that if no treasonable charges were proven against Mr. Goolrick, he be permitted to act until the British government could be heard from, as Mr. Stuart was himself only an acting official, with no authority to appoint, suspend or dismiss consular officers.

Mr. Seward's agent (Ruggles) reported that on arriving at Fredericksburg, he saw the British flag waving over Goolrick's house "in disregard of his promise to the British Legation to abstain from ostentatious display."¹ The agent found the "rebels" "sullen" and the Union men "distrustful," so only a few beside the officer who conducted the raid on Goolrick's premises were willing to testify. These gave Goolrick the reputation of storing arms and provisions belonging to the Confederate forces. Amongst the papers seized were a pass and letter: the former was issued by the provost-

¹ *Dip. Cor., loc. cit.*, 268.

marshal at Richmond, to P. Goolrick, and bore on its back an oath of allegiance to the Confederate States signed with his name; the letter was supposed to be from him and applied for a commission for his son in the Confederate army. Goolrick made affidavit that he was a naturalized citizen, of Irish birth, had lived in Fredericksburg forty-five years, had been vice-consul nine, and considered himself a neutral; that despite the certificate on the back of his pass, he had taken no oath of allegiance to the Confederacy, had rendered them no service and had prevented many British subjects from joining their ranks. But the agent, hearing that Goolrick had three sons in the Confederate Army,¹ did not credit his statements; in fact he thought "the most partial view admissible" was that Goolrick had "acted the part of a spy and a traitor." As General Reynolds had been transferred, the agent thought he should be consulted about the flour, and that nothing final should be done in regard to it until the return of peace.

In forwarding this report to Mr. Stuart, the Secretary of State said the President considered it incompatible with the public welfare that Mr. Goolrick be continued in office, but he might act, if Mr. Stuart desired, until the Foreign Office was heard from. The chargé was not understood to make any claim for indemnity for the flour, so that would be left in abeyance. The British government (so far as accessible documents reveal) seems to have ignored the whole matter and the office at Fredericksburg was not continued after the war. Perhaps their apparent indifference was due to the fact that the now generally accepted principle of the inviolability

¹ Mr. Goolrick's granddaughter informs me that there were *five* instead of *three*.

of consular archives¹ was not so widely accepted then, and Great Britain in particular did not concede extritoriality to consuls resident in her domains, and could not consistently demand it for her consuls. Only a few years previous, the sheriff of Manchester took possession of the American consul's office because the rent was unpaid. Though the State Department was notified, no diplomatic representations were made, as Minister Dallas seemed to think the consul's claim for immunity, *etc.*, proceeded from personal irritation.² Just about the time Mr. Goolrick's trouble occurred, the Seven Days' Fight near Richmond was in progress, which perhaps overshadowed him, and the battle of Fredericksburg in the following winter probably pushed him further into the background.

Turning now to the headquarters at Richmond, we find that Consul Moore, shortly after his correspondence with Lord Lyons about the blockade, had gone on leave of absence, putting the consulate in charge of Mr. Cridland. The office, at the beginning of hostilities, was daily crowded with British subjects desiring to get away, who came for passports, exemptions from military duty, to borrow money, or to send letters to England.³ At first, Cridland seems to have forwarded these, sometimes by private messenger, until his own and Bunch's experience taught him the wisdom of obeying Lord Lyons' instructions. In October, 1861, he sent a bag of dis-

¹ Moore's *Digest of Int. Law*, v, 48 *et seq.*, and Halleck's (1904 edition) *Int. Law*, 321, give the present position. Lawrence's *Wheaton*, 427, and Martens' *Guide Diplomatique*, i, 235, give the view current then.

² Through the kindness of Prof. John Bassett Moore, I was permitted to see copies of the correspondence in this case. *Cf.* also the works of Wheaton and Martens cited above.

³ Hopley, *Life in the South*, i, 374; ii, 67.

patches by J. P. Crosse to Consul Archibald, at New York. Crosse's trunk was seized in Baltimore and sent to Fort McHenry; under instructions from the Legation, Consul Bernal demanded the bag but General Dix refused to surrender it and referred him to Mr. Seward, to whom Lord Lyons addressed an inquiry. The Secretary replied that such a bag had been found "in the trunk of a spy of the insurgents, who had escaped;" though addressed to the consul at New York, it had nothing to identify it as sent by the consul at Richmond. Under the circumstances, Seward had opened it, and found no dispatch for any British functionary in America but a few apparently official letters for the Foreign Office, which had been forwarded. The other contents he retained, as being such as no consul had a right to send. In March, 1862, Lord Lyons informed him that Her Majesty's Government had obtained information about the bag, which the consul described as being closed with the seal of his consulate; Her Majesty's Government thought this seal should have been respected, hence he was instructed to complain. Mr. Seward agreed entirely with the principle enunciated, but in the case in point, there was nothing to identify the bag, which was merely closed with twine; he had inquired of the Provost-Marshal and of Gen. Dix, both of whom had received it in the same condition; he would make further efforts to learn if any person in the service of the United States had violated the seal. He gently insinuated that Her Majesty's Government ought to reprimand the consul for sending such matter in his official mail.* Meanwhile Lord Lyons had arranged for the carriage of official cor-

* *Diplomatic Correspondence*, 1861, 174 et seq.

* *Ibid.* 275 et seq.

respondence by men-of-war, and consuls were warned to include no private correspondence, whether for Englishmen or not; this regulation seems to have been observed¹ after this.

In the Queen's proclamation of neutrality, all British subjects had been particularly warned against taking up arms for either belligerent. The consuls kept the proclamation conspicuously posted and tried to see that its provisions were observed. Mr. W. H. Russell tells us that Englishmen and foreigners generally were slaveholders and "amongst the most determined opponents of the North."² Many of them had become naturalized, more were voters, many had acquired property, and some, like Robert Mure, had been officers in the militia. In the first flush of excitement a number had volunteered; some, getting tired, were discharged at the expiration of a short enlistment. Others displayed sympathy for the Confederacy in various ways. Many had resided so long in the South that few of their neighbors remembered their foreign origin; under these circumstances, complications were sure to arise sooner or later. Many British subjects attempted to leave at once, but could not get passes through the lines, though, doubtless, many slipped through without. Others, content to remain till subjected to conscription, then wanted to take refuge behind the Queen's proclamation. The first recourse was to the consuls, who diligently strove to protect them, but eventually the tone of the consuls' efforts aroused local and official animosity.

Cridland seems to have been one of the first consular agents to take up this matter. As early as June, 1861,

¹ Hopley, *op. cit.*, i, 387. *Sessional Papers, loc. cit.*, 297.

² *Civil War in America*, 80. Also see Hopley, *op. cit.*, ii, 360.

he applied to Governor Letcher for the release of several British subjects who (Lord Lyons informed him) had been forcibly enlisted in the Virginia troops. G. W. Munford, Secretary of the Commonwealth, replied that no British subject would be knowingly mustered into the Virginia forces; only able-bodied male citizens eighteen to forty-five years old were subject to duty, and as the Confederate troops were volunteers, no one had been enrolled against his will; if such had been the case, a writ of *habeas corpus* (which was not yet suspended) would have brought relief, as any judge had the power to order the discharge of such a person. The persons whose affidavits Lord Lyons had sent should therefore apply to the courts, though Secretary Munford believed, as a point of law, that a foreigner might be enlisted, provided the country of his residence were not at war with his native land. These remarks were merely made to show Virginia's friendly attitude to Great Britain, as all the Virginia troops had been turned over to the Confederate authorities, and the state had no control over the cases in question. By the Governor's direction, Secretary Munford sent a copy of this letter to Secretary Toombs in order that he "might be put in possession of the action of the executive upon the question raised by the letter of the consul."¹ This case is of interest not only because of the attitude of the state government here displayed, but because it was one of the only two appeals made to Virginia authorities; the Richmond consulate thereafter made application to the Confederate government. In October, W. M. Browne, Confederate Assistant Secretary of State, wrote Mr. Cridland about this same case, of which Lord Lyons had been informed by a citizen

¹ *O. R. A.*, 2, iii, 687 *et seq.*

of Rhode Island. He practically reiterated Munford's remarks about the *habeas corpus* and concluded that Lord Lyons must be mistaken.¹

The other direct appeal to the state authorities was in behalf of Jeremiah Hare, who wrote from the Roanoke jail in August, 1861. He said that he had been arrested by the troops of General Wise, had never been tried and knew no reason for his detention, as the jailer had received no charges against him. The Virginia authorities replied that General Wise, being a Confederate officer, was not responsible to them, but they enclosed some information supplied by the sheriff of Roanoke, who said Hare was charged with treason, but could not be tried, as the witnesses were in the Union lines. The provost-marshal had arrested him in company with some Federal soldiers, whom he was known to have supplied with information. Mr. Cridland apparently dropped the case.²

In March, 1862, the initial process was reversed when the Confederate State Department sent to Governor Letcher of Virginia, a protest of Cridland's in regard to five British subjects who had been compelled to serve when the militia was called out. Their colonel was reported to have said that *all* citizens of *any* nation, if enrolled, must serve. Mr. Cridland thought this was in contravention of international law, the Queen's orders, and the Confederate constitution. Whatever the opinion of the State Department, it was careful to say that it had merely referred the matter to the governor of Virginia, as it had no jurisdiction therein, but enclosed was an order from General Lee for the release of all unnaturalized aliens in the Confederate armies. Governor Letcher likewise ordered the discharge of all persons in the state forces claiming to be British subjects.³

¹ *Pickett Papers.*

² *Ibid.*

³ *Ibid.*

One of the last cases called to Mr. Hunter's attention, during his term as Secretary of State, was that of J. W. Zachariah of New Orleans. In December he and one Rogers of San Antonio while *en route* from Havana to Matamoras were taken from the British steamer *Eugenie Smith* by the U. S. S. *Santiago*, at the mouth of the Rio Grande. He does not say how long he was in duration or why, but next month he was in Richmond demanding that Cridland have his government investigate the "outrage." He was told to address Secretary Hunter, who seems to have ignored him;¹ but Lord Lyons asked Mr. Seward about it and was told that the "American citizens . . . had been set at liberty," which information gave Lord Russell "much satisfaction."²

Mr. Benjamin was transferred from the War to the State Department of the Confederacy in March, 1862. One of the first communications he received from Mr. Cridland contained an extract from the consular archives which that gentleman wished him to take cognizance of. He returned it unread, with the calm announcement that "this Government can have no possible interest nor concern in being informed of the contents of your official archives, ✓ and must decline to permit copies of them to be filed in this Department".³

Consul Moore was said to have paid the interest on the Virginia debt while on leave.⁴ When he returned he made several protests and appeals. One of the most unusual was the case of a lady who wanted to return to England. Mr. Moore said that at Gen. Winder's⁵ office she was advised

¹ *Pickett Papers*.

² *Sessional Papers*, 1862, lxii, 138.

³ *Pickett Papers*.

⁴ *N. Y. Times*, Dec. 5, 1862.

⁵ Brig.-Gen. J. H. Winder of Maryland, commanding the Department of Henrico, including Richmond and the military prisons.

to go by the Potomac; at Winchester she obtained a pass to Shepherdstown, but after proceeding four miles, was arrested by a provost officer, her trunks, clothing, *etc.*, being ransacked and indecently exposed by a captain and two subordinates; her passes and identification papers were confiscated and she was told to report daily, but was soon sent back to Richmond. Naturally Mr. Moore was indignant; the Secretary of State seemed equally so and promised immediate investigation with a view to redress. The outcome of the search was not made known, unless in one of the personal interviews Mr. Moore occasionally asked of the Department.¹

Another protest was in connection with three Scotchmen, impressed in Petersburg and sent to Camp Lee, in January, 1863. The commandant of conscripts refused to release them, but granted a four-day furlough, after which they would be considered deserters if absent. Mr. Moore's protest was in obedience to a Foreign Office circular of October 11, 1862, parts of which he had quoted before. As these instructions were quoted in part or in full at various times by other consuls, they are here given in full. ✓

Her Majesty's Government have had their attention called to the forcible enlistment of British subjects in the army of the so-called Confederate States. I have to instruct you to lose no time in remonstrating strongly against such a proceeding on the part of the authorities of these States.

British subjects domiciled only by residence in the so-called Confederate States cannot be forcibly enlisted in the military service of those States, by virtue of an *ex post facto* law, when no municipal law existed at the time of the establishment of their domicil, rendering them liable to such service.

It may be competent to a State, in which a domiciled for-

¹ *Pickett Papers.*

eigner may reside, to pass such *ex post facto* law if at the same time option is offered to foreigners affected by it to quit, after a reasonable period, the territory, if they object to serve in the armies of the State : but without this option such a law would violate the principles of international law ; and even with such an option, the comity hitherto observed between independent states would not be very scrupulously observed.

The plainest notions of reason and justice forbid that a foreigner, admitted to reside for peaceful and commercial purposes in a State forming a part of a Federal union should be suddenly and without warning, compelled by the State to take an active part in hostilities against States which, when he became domiciled were members of one and the same Confederacy ; which States moreover, have threatened to treat as rebels and traitors, and not as prisoners of war, all who may fall into their hands.

To these considerations must be added the fact though persons who have been victims of this forced enlistment are forbidden under severe penalties by the Queen's proclamation to take any active part in the civil war now raging in America, and that they are made, not only to enter a military service contrary to their own wishes, and in violation of the tacit compact under which they took up their original domicile but also to disobey the orders of their legitimate sovereign.

You will urge these several considerations on the *de facto* authorities of the Confederate States, adding that Her Majesty's Government confidently hope and expect that no further occasion for remonstrance will arise on this point.¹

Moore and Bunch sent copies of this circular to Mr. Benjamin, immediately upon receiving it in November, 1862, but he merely acknowledged its receipt without deigning to make any comment, though he thought its constructions contained " very questionable assumptions, both of law and of fact ".² Even before the receipt of these instructions,

¹ *Sessional Papers*, 1864, lxii, 415.

² *Pickett Papers*.

we have seen that the consuls made numerous remonstrances, to which courteous replies were returned and, where necessary, investigations ordered; sometimes the report proved to be unfounded, or the parties had been naturalized; usually, however, they were ordered discharged. This course was not affected by this circular.

In February, 1863, seeing an order to the effect that thenceforth Gen. Winder would have charge of the issue of all passports to go beyond the military lines, Moore asked permission to notify all British subjects desirous of leaving that they should apply, as "option to leave the country would modify, in a certain degree, the present vexed question of the non-liability of resident foreigners, under certain aspects, to the conscription".¹ Mr. Benjamin replied that, though he had no authority over the granting of passports, British subjects of course had a right to leave at pleasure, but passage through the lines was subject to the military authorities, and he doubted if they would permit it, as the inconvenience and danger were obvious. The writings of Mr. Malet² and Miss Hopley,³ as well as other evidence, show that occasional permits were granted; some foreigners left by the flag-of-truce boats, others slipped through the lines or ran the blockade.

Mr. Moore's office was used as a clearing-house for the other Southern consulates. The State Department would give him packets, private letters, *etc.*, received by various means, to forward to the other consuls, and after the military authorities refused to let any one but consuls pass the lines, he would take Lord Lyons the dispatches sent by the others.⁴ Also, when the British government desired to

¹ *Pickett Papers.*

² *An Errand to the South.*

³ *Life in the South.*

⁴ *Pickett Papers*; N. Y. *Times*, April 1, 1863.

communicate with the Confederates about Hester, an officer on the C. S. S. *Sumter*, who killed his superior in British waters, they used Mr. Moore as the channel,¹ though he did not receive some of the dispatches until after his dismissal.

This dismissal was brought about in the following manner. Moore noticed, in February, 1863, that the legislature of Mississippi had recently amended its militia laws so as to make liable all male whites, eighteen to fifty years of age, "residing temporarily or permanently" in that State, and Governor Pettus had issued orders in accordance therewith.² Moore asked Benjamin if he was to understand that any act of Congress was subservient to the legislature of Mississippi. In a postscript, he stated that he had just been informed that a British subject had been assaulted, had lost one eye, and was confined in a bitterly cold prison at Jackson, simply because he resisted conscription. Mr. Benjamin replied that before answering Moore's question, he must investigate his credentials. "The *exequatur* granted . . . by the Government of the United States was conferred at a date when that Government had the right to act in such matters as the agent of the States that have since formed the Confederacy, and the *exequatur* has not been questioned. It was supposed to have reference solely to consular functions in Richmond, or at furthest, in the State of Virginia. As your letter, however, initiates a diplomatic correspondence with this Department on the subject of the laws and regulations of the State of Mississippi, it becomes necessary to request that your Consular Commission, as well

¹See *Pickett Papers, Sessional Papers*, 1864, lxii, and Callahan, *Diplomatic History of Southern Confederacy*.

²The clipping from a Mississippi newspaper, containing both the statute and the proclamation, was sent by Moore to Lord Russell. See *Sessional Papers, loc. cit.*, 449.

as any other authority you may have received to act in behalf of the Government of Her Britannic Majesty, be officially submitted to this Department, in order that the precise nature and extent of your functions may be ascertained before further correspondence can be held with you as Her Majesty's Consul at the port of Richmond."¹ To this perfectly legitimate request Moore paid no attention, though he had a personal interview with Mr. Benjamin three weeks later.

On the fifth of May, Moore addressed a letter to the War Department, asking the release of two other conscripts, Maloney and Farrell. Secretary Seddon, unaware of Mr. Benjamin's demand for Moore's credentials, ordered an investigation, which revealed that both men had come from Ireland so long ago that they had forgotten the date, but had lived in Greenbrier County over eight years, had married, acquired property there, and voted several times, hence they were considered by all the Confederate officials to be liable for service. The same day Moore applied to Mr. Seddon he wrote to the person who had informed him of Maloney and Farrell, accusing the authorities of dilatoriness, apathy and "apparent indifference to most atrocious cruelty", adding that though he had served thirty-two years in despotic countries, he had there received more courteous official treatment and consideration than in the South. This letter fell into the hands of Seddon, who sent it with the report of the investigation, in order that from its "extraordinary, unjustifiable and unfounded" state-

¹ Most of this correspondence is in the pamphlet *Correspondence of the Dept. of State, etc.*, published in Richmond, 1863, in the Southern papers for June and October, and in the *Sessional Papers*, 1864, lxii, but I have drawn the data mainly from the *Pickett Papers*. T. K. Jones, the subject of Moore's complaint, had served one enlistment and been discharged; still he wanted to be "neutral."

ments, Mr. Benjamin might learn the "spirit and feeling of this man discharging amongst us the functions of a British consul".¹

Next day (June 5) the Secretary of State wrote Mr. Moore that the President, being informed that Moore had not only neglected to submit his credentials when requested, but had disregarded the authority of the State Department by corresponding as consul with the War Department, considered it "inconsistent with the respect which it was his office to enforce" towards the Government that Moore "should any longer be permitted to exercise the functions or enjoy the privileges of a consul in these Confederate States".² Accordingly the Secretary enclosed a copy of the letters-patent revoking Moore's *exequatur*; they were also published in the local papers. The same day he sent duplicates of the correspondence to J. M. Mason, Confederate commissioner to England, and said that the Confederacy, desiring to maintain amicable relations with neutral countries, had not questioned the validity of *exequaturs* issued by the United States prior to the formation of the Confederacy, and, he added,

✓ The State of Virginia, having granted to the Government of the United States, by the Constitution of 1787, the power of controlling its foreign relations, became bound by the action of that Government in its grant of an *exequatur* to Consul Moore. When Virginia seceded she withdrew the powers delegated to the Government of the United States and conferred them on this Government; the *exequatur* granted to Consul Moore was not thereby invalidated. An act done by an agent while duly authorized continues to bind the principal after the revocation of the agent's authority. On these grounds

¹ *Pickett Papers*.

² *Ibid.* Benjamin's letter to Mason is also in vol. ii of Richardson's *Messages and Papers of the Confederacy*.

the President has hitherto steadily resisted all influences which have been exerted to induce him to exact of foreign consuls that they should ask for an *exequatur* from this Government as a condition of the continued exercise of their functions. It was not deemed compatible with the dignity of the Government to extort, by enforcing the withdrawal of national protection from neutral residents, such inferential recognition of its independence as might be supposed to be implied in the request for an *exequatur*. The consuls of foreign nations . . . have been maintained and respected in the exercise of their legitimate functions, and the same protection and respect will be accorded to them in the future, so long as they confine themselves to the sphere of their duties and seek neither to evade nor defy the legitimate authority of this Government within its own jurisdiction.

But this tolerance, the dispatch continued, had allowed the growth of an abuse which could no longer be permitted. The foreign ministers in Washington sought to exercise authority over consuls in the Confederacy, thereby ignoring the Confederate Government, so the President felt obliged to order that no direct communication be permitted between the consuls of neutral nations in the Confederacy and the functionaries of those nations residing in the enemy's country. All communication, therefore, would be "restricted to neutral vessels arriving from neutral ports. The President has less reluctance in imposing this restriction because of the ample facilities" which were afforded by the regular arrival and departure of ships from Confederate ports, "in spite of the paper blockade which is upheld by Her Majesty's Government in disregard, as the President conceives, of the rights of the Confederacy, of the dictates of public law, and of the duties of impartial neutrality".¹

¹ *Pickett Papers*, Aug. 10. Lord Russell told Mr. Mason that he still had no reason to alter the opinion of the blockade quoted in Chapter III (see *Sessional Papers*, *loc. cit.*, 451).

The Southern papers approved of the revocation in varying degrees. The Richmond *Whig*¹ called it a step in the right direction but wanted all consuls dismissed as a means of hastening recognition. The Charleston *Mercury*² thought Mr. Benjamin's letter to Mason an apology to England, and remarked that "other people keep a State Department for their foreign policy, but we keep up a foreign policy for our State Department". The Savannah *Republican*³ approved the President's position and thought it would be unjust to innocent foreigners to dismiss their consuls without cause, though it disagreed with Mr. Benjamin as to the validity of *exequaturs* because of any former relations with the United States. The London *Index*,⁴ being a Confederate organ, of course approved; the *Times*⁵ announced the fact without comment. The New York *Albion*,⁶ a British organ, doubted if all the reasons for the dismissal had been avowed, but thought it an academic question as to whether an *exequatur* could be revoked by a government to which its holder was not accredited, as of course *de facto* authorities could prevent the exercise of consular functions. The New York *Times*⁷ said: "The United States Government will certainly offer no objection to the driving out of every consul in the South, every one of whom, without exception, we believe, has proved himself, where opportunity offered, a rebel sympathizer and mischief-maker."

To return to Mr. Moore. Two days after the dismissal Mr. Benjamin requested the War Department to issue the necessary orders to prevent any communication between foreign agents in the Confederacy and in the United States, whether by messenger or in person; on the 10th, he sent a

¹ June 6.² June 8 and 17.³ June 20.⁴ July 2.⁵ June 20.⁶ June 13.⁷ June 20.

circular to the consuls forbidding such communication.¹ Moore acknowledged receipt of the letters-patent on the 6th and wrote Lord Russell: "I am very happy to state that my last crowning consular act was consummated yesterday morning before I received this ungenerous withdrawal of my *exequatur*, by which measure I have checked the attempted conscription of British subjects under various pretexts, namely, for having voted, for having declared their intention of becoming citizens, for holding real estate, and for being married in this country, so numerous British subjects got their release from captivity in a military camp yesterday, and it will stay, I trust, for a time, this source of anxiety to them. If I am to leave Richmond, it will be absolutely necessary that this Government should allow the unshackled departure of all British subjects, and if military exigencies should be pleaded as an excuse for objecting to allowing them to cross their military lines" he suggested sending steamers to various points to fetch them. "There are numerous British workmen in the different Government workshops who are very anxious to leave at their own expense but are refused passports."² To this last suggestion Lord Lyons apparently gave no heed; in reporting the case to Lord Russell, he thought that direct correspondence between his office and the consuls was so slow and uncertain as to be of little value, besides arousing suspicion in both regions.³ Moore asked Benjamin for a passport and permission to leave on the flag-of-truce boat for City Point, pledging himself to communicate nothing prejudicial to the Confederate States and to bear no dispatches save his own "explanatory papers".⁴ Meanwhile, as Cridland had previously been sent elsewhere, he announced in the local papers

¹ *Pickett Papers*.

² *Sessional Papers, loc. cit.*, 381.

³ *Ibid.*

⁴ *Pickett Papers*.

that British subjects requiring professional advice might call on G. A. Myers, Esq., to whom he had entrusted the archives of his office, which had been located in Myers's house.¹ He then proceeded to Washington and obtained Lord Lyons's permission to go to England. Mercier offered Lyons the service of the French consul at Richmond, but he preferred to abide by Moore's arrangement.²

By his last "crowning consular act" Moore seemed to refer to an order from the Bureau of Conscription, which he enclosed in his dispatch. The Conscription Act was passed in April, 1862,³ and in May, at the request of the War Department, Attorney-General Watts gave his opinion as to the liability of foreigners under the act. As it specified all white, male residents, 18 to 45, not legally exempted, and Congress, which alone had the power, had not declared resident unnaturalized foreigners exempt on account of their nativity, he concluded that it intended that at least *domiciled* foreigners should serve; *i. e.*, those who had acquired habitation with no intention of removal. Such persons, having acquired a national character in the Confederacy, had a right to claim its protection, but such protection involved "the correlated duty of defending the country". Any foreigner who had not chosen to leave before the commencement of hostilities was presumed to consider the Confederacy his domicile; he might yet leave with permission, but each day he remained he might be conscribed; after a reasonable time from the declaration of hostilities the right to change domicile was subordinate to public safety. Mr. Watts would not volunteer an opinion of the expediency

¹ Malet, *op. cit.*, 284.

² *Sessional Papers*, *loc. cit.*, 384 *et seq.*

³ *Statutes at Large*, 1st Congress. 29 *et seq.* For amendments see p. 62.

of conscribing foreigners.¹ As we have seen, there were numerous conscriptions. Moore seems to have brought to the attention of the Bureau a letter from a conscript officer saying that any "foreigners who had purchased real estate thereby declare their domicile in the Confederate States and are subject to conscription, notwithstanding the protection given them in their consulate papers".² General Rains,³ whether under Moore's influence or not, issued instructions (May 22) to commandants of conscripts, denying the conclusiveness of such evidence. Owning real property, voting, marrying, even the declaration of the party, were not proofs of domicile but only of intention to remain. "A man is presumed to hold the domicile of his nativity until another is obtained, and to constitute this change the fact and intention must concur." It was impossible to prescribe the circumstances which should govern in all cases, but whatever the evidence, it must "satisfy the mind fairly and reasonably that the party has not only changed his domicile in point of fact, but that he so intended." ⁴ This scarcely seems the triumph Moore considered it, as the various commandants would still interpret the evidence and appeals were tedious. Probably the rest of his letter meant that he had just learned that the instructions really secured the release of some conscripts.

England appears to have made no question of the Confederacy's right to revoke the *exequatur*, though an entirely different reason was assigned. In the House of Commons, July 10, 1863, Mr. Blake said that R. R. Belsham, a British subject residing in Alabama, for refusing to serve in the

¹ *Pickett Papers*.

² *Sessional Papers, loc. cit.*, 385.

³ Superintendent of Conscription.

⁴ *Sessional Papers, loc. cit.*, 386.

Confederate army, had been dipped three times in a tank of water; at the fourth dip, to save his life, he consented. The case was reported to Lord Lyons, who directed the consul at Richmond to inquire. Mr. Blake understood that Belsham had been sent to Montgomery, but could not be traced any further. Had the Foreign Office any information? Under-Secretary Layard replied that Lord Lyons had nothing to do with the case, though Mr. Moore did make representations. Mr. Belsham was tortured, and his was not the only case, but such occurrences were at a distance from Richmond, the Confederate authorities expressed regret, and the Confederate Congress had rejected a bill to enlist foreigners.¹ Mr. Moore made numerous representations respecting these acts of cruelty, and had in consequence been dismissed. Mr. Layard did not know where Belsham was.² Benjamin seems never to have heard of Belsham till he saw a report of this colloquy, as in August he requested the Secretary of War to supply any information he had about Belsham, and referred to this discussion. Assistant-Secretary Campbell informed him that the request was referred to General Bragg, whose chief-of-staff reported that Belsham had been detained by order of the War Department at Natasulga, Alabama, in the camp of instruction. The papers in his case had been sent to the Confederate District Court at Mobile.³ October 8, Mr. Benjamin wrote Slidell, Confederate commissioner to France, that he had never heard of Belsham till the Parliamentary debates were received, and that no representation respecting him was to be found in the files of the Department.⁴ "This 'British subject' who was trying to obtain notoriety as a

¹ Rejected in Senate April 24, in House next day. See *Journal*, iii, 236, 321, 340; vi, 27, 256, 420.

² Hansard's *Debates*, clxxii, 552 *et seq.* Richmond *Enquirer*, July 28.

³ *Pickett Papers*.

⁴ *Ibid.*

martyr " ¹ was in London in September appealing to Lord Russell to demand an indemnity. He was told that if "communications should be opened with the so-called Confederate authorities " his case would be attended to.

¹ Charleston *Courier*, October 22.

CHAPTER V

THE VICE-CONSULATE OF WILMINGTON

As noted in Chapter I, North Carolina was under the consulate of Charleston, but for our purpose it is more convenient to consider the districts of that consulate separately. The vice-consul at Wilmington was Donald McRae, of the mercantile firm of J. & D. McRae. The indexer of the Official (army) Records evidently identifies him with D. G. McRae who wrote from Fayetteville in November, 1861, advising President Davis to issue a proclamation that all unnaturalized foreigners "found in arms aiding the United States . . . will be considered as interlopers . . . and not treated as legitimate prisoners of war".¹ As there were at least two D. McRaes in the North Carolina troops, it is improbable that the vice-consul was this fire-eater, though he may have been a relative. Donald McRae was interested in consular affairs only incidentally, seldom acting directly, but reporting cases calling for intervention to the Charleston office; even this task he sometimes delegated to a deputy.

In Chapter II we saw that he kept Bunch well posted about the status of the blockade of North Carolina. The first case for appeal to the Confederate authorities in con-

¹ *O. R. A.*, 2, ii, 436, 1397, 1597. For Adj. D. A. McRae of the 23th N. C., see 1, xi, pt. i, 745; for Capt. D. G. McRae of the 38th N. C., see *Journal C. S. Congress*, iv, 397.

nection with the blockade was that of the *Carrie Sandford*¹ in August, 1861. On the 29th of that month Bunch wrote Governor Clark that McRae reported that the *Carrie Sandford*, a British schooner from Havana, had arrived in ballast, but on attempting to load Captain Daggett was informed by the chairman of "a self-constituted body calling itself the Safety Committee" that he might not do so, as the committee had passed an ordinance forbidding any vessel to enter Wilmington in ballast and carry away a cargo. The vice-consul also understood that the commandant of the fort at the mouth of Cape Fear River would let no vessel pass without the sanction of the committee. Mr. Bunch was sure that Governor Clark would not permit an extra-legal body to interfere with functions pertaining only to the Confederate Congress, which had passed no such law.² Getting no reply, he gently jogged his Excellency's memory (Sept. 11), remarking: "If you purpose to sanction the proceedings of the self-constituted authorities of Wilmington, I should at least wish to be acquainted with the fact." But he felt certain that the governor would reprobate them, and would not allow unnecessary delay, particularly as the blockade was totally ineffective and he could not see that it was to the interest of North Carolina

to put in the way of neutral trade those obstacles which the Government of the United States fails to create. Besides which North Carolina has not the right to do so. She can only carry out such a pretension by incurring a heavy responsibility towards those with whose lawful commerce she

¹ A small part of this correspondence is in *O. R. A.*, 2, iii, 72 *et seq.*, more in the *Pickett Papers*, for the rest I am indebted to Mr. R. D. W. Connor of the N. C. Historical Commission, who copied it for me from the "*Executive Letter-Book of Gov. H. T. Clark*."

² *Gov. Clark's Letter Book*. Also see *O. R. A.*, *loc. cit.*

interferes. Your Excellency is doubtless aware that the Congress of the Confederate States has opened all the ports along the coast to neutral vessels—thus inviting the very trade which the citizens of Wilmington seem disposed to reject.¹

Even this very tactful appeal failed to move the obdurate governor to do more than telegraph Mr. Bunch that the case was under investigation, and to send Mr. Davis the letters received from the consul, as the subject involved grave questions concerning both the State and the Confederate Governments, and he deemed it “very important that the two governments should be of accord in their decision”. He characterized the Committee of Safety as a “self-constituted and unauthorized body of patriotic citizens of Wilmington, sanctioned by the public will of the community”. They alleged that the *Carrie Sandford* was not a British vessel, but was carrying on an illicit trade under a false flag, being owned at the North and commanded by a Northerner; if she were really British, there would be no objection to her release.²

This attitude of Governor Clark’s contrasts forcibly with that of Governor Vance, who strenuously opposed Confederate control of blockade-running, as well as conscription and the suspension of *habeas corpus*.³

September 23d the impatient Bunch remarked that “with every disposition to allow” for the numerous and engrossing duties of the governor, he was “unable to find in them

¹ *Op. cit.* For the action of Congress referred to see *Journal*, i, 81, 377.

² *Letter Book*.

³ For Vance’s attitude see *O. R. A.*, 4, iii, 681 *et seq.* Moore, *Rebellion Record*, viii, 596. Dowd, *Life of Vance*, 70 *et seq.* Schwab, *Financial and Industrial History of the South during the Civil War*, 190 *et seq.*

sufficient reasons for the delay". If the Committee of Safety acted in accordance with Confederate law, such a statement would have been sufficient; if not, it was only necessary for his excellency "to repress their unauthorized action". However, he understood that the case of the *Carrie Sandford* had been settled by her taking a cargo of lumber, as she was not permitted to lade with naval stores; therefore he had no wish to raise further questions concerning that case.¹ But Mr. McRae reported the arrival of two other British vessels in ballast, the *Napier* and the *Robert Bruce*. Again that officious committee had bestirred itself and declared that they should not lade "even in the event of your Excellency's orders being issued for them to do so, and further that the orders of the Confederate Government will not be respected". This compelled the consul to appeal for executive interposition, as the vessels were suffering by the delay, which would ultimately lead to a suit for damages. With even more tact than before, he concluded:

Should your Excellency not have favored me with a satisfactory reply within a reasonable time, I shall find myself compelled to address a strong remonstrance to the proper authority at Richmond. But I am still in hopes that you will spare me so disagreeable a necessity, and that the Chief Magistrate of North Carolina will ensure to the subjects of Great Britain within that State the protection which they have a right to claim at his hands.²

Neither the dire threat nor the subtle flattery having produced a reply by October 1, Mr. Bunch wrote Secretary

¹ The *Carrie* did not seem dismayed by her treatment, as she ran the blockade to get back into Wilmington in November. See N. Y. *Herald*, Dec. 14.

² *Letter Book*.

Hunter that in compliance with instructions from London to protect British interests regardless of political changes, he must complain of the Committee of Safety (of which he understood the mayor of Wilmington was chairman). He related at length the hardships the *Carrie Sandford* had endured; he had protested to the governor without avail, so appealed to the State Department in behalf of the *Napier* and the *Bruce*. They had been detained long enough to lose the chance of leaving before the port was blockaded. Their masters had been informed by the mayor, in the presence of the vice-consul, that if they attempted to lade he would not protect them from mob violence, and no decision of Governor or President would affect him. The *Napier* was chartered by a citizen of Wilmington to take naval stores to Europe, while the *Bruce* had a cargo ready for Bristol, where the owner of ship and cargo lived. Mr. McRae had been told by members of the committee that they knew their actions were illegal, but were in accordance with the wishes of the Richmond Government, which had passed no embargo, knowing it could trust their zeal. Bunch discredited that report and requested that he be informed if the ships had violated any law; if not, that the Department would interfere in their behalf.¹

Later he sent copies of letters from Dix, acting vice-consul, who on the 10th informed him that the general commanding had just received instructions to allow the vessels to lade and depart. The *Napier* had laded, cleared and received a pass from the general without any interference. Next day Dix wrote that she had again been stopped, General Anderson² having revoked his permit in pursuance

¹ *Pickett Papers*.

² Brig.-Gen. J. R. Anderson, commanding at Wilmington, etc. His instructions from the War Department are in *O. R. A.*, 4, i, 768:

of orders received from the War Department forbidding the shipment of naval stores. The skipper, having given bills of lading, had appealed to Secretary Memminger. The *Bruce's* cargo was bought and ready, but she could not lade it. Bunch at once wrote the State Department demanding the "final decision of the Confederate Government in this matter".¹ Not receiving any reply, he requested Cridland to inquire the reason. Cridland called on the Secretary and was told that Bunch's dispatches were ignored because they were not properly addressed, Mr. Hunter's "official character" not being written under his name. The Secretary suggested that Bunch rewrite the dispatches or write a note saying he meant to write the title under the name. Bunch wrote, October 17, that he had addressed Hunter as he was accustomed to address Lord Russell and Lord Lyons, so he could not re-write the dispatch, as was suggested, nor say that he had meant to put the title there, as this action would imply that his first was wrong. It was intended as an official document to the Secretary of State of a *de facto* Government, in which capacity he had called on Mr. Hunter to redress what he considered an injustice, using perfectly respectful and temperate language, in point of form just as he would address a similar officer of his own or any other country. So he could not alter his dispatch, but if Mr. Hunter wished to print it, he was welcome to put "Secretary of State" under his name, and Bunch would "cheerfully use a similar designation in any further correspondence".²

"The Department is not willing that you should permit vessels to depart from your command, laden with naval stores, no matter under what flag nor to what destination." (Oct. 8, 1861.)

¹ *Pickett Papers*.

² *Pickett Papers*. The dispatches of Oct. 1 and 12 were addressed to "The Hon. R. M. T. Hunter, *etc.*, *etc.*, *etc.*," that of the 17th to "Hon. R. M. T. Hunter, Secty. of State, *etc.*, *etc.*, *etc.*"

While this was taking place, the following interesting letter was sent Mr. Bunch from Raleigh, October 4th:

Permit me to assume that it is from no want of respect or proper attention to the business brought to my notice by you that I have not replied earlier.

Information has been laid before me that an illicit trade was carrying on between our ports and the United States under protection of the British flag,—and that Mr. Vice-Consul McKay¹ either failed to sustain the good faith of his government—or was himself implicated.

The investigation of this has occupied my time, but for want of intercourse with parties in the United States, I have made no satisfactory conclusions. I trust this will account for my delay.

You allude to the “disagreeable necessity” of making a remonstrance to the authorities at Richmond. That is the proper tribunal, and I see nothing disagreeable in resorting to it. It certainly would be agreeable to me that you should pursue that course. The “claim for damages” which you notify me will probably be made against us, I would suggest that they would more suitably be brought against the United States, with whom you have a *treaty* to trade with Wilmington, but who [*sic*] you allow to block you out the Port, and despite the terms of the treaty refuse you to load in or to sail in or out of Wilmington.

You will not make a treaty with us and consequently trade becomes a matter of policy—and it surely is not our policy to allow vessels to come in *ballast* and load out with that which alone sustains our trade or renders it desirable. Free trade is our cherished policy but there must be reciprocity. We would be glad to establish some relations of trade with you and we would faithfully carry out all such and would always

¹ Evidently for *McRae*, who was certainly interested in the *Bruce*, if not in others, as was proven by a dispatch taken from the petticoat of a passenger on a steamer from Fortress Monroe to Baltimore. See *O. R. N.*, vi, 467 *et seq.*

listen with pleasure and respect which you as Consular Agent would bring before us. [*sic.*]

With sentiments of respect,

Yours

Henry T. Clark¹

Secretary Hunter wrote October 31 that the Confederate government feared if the *Bruce* and *Napier* were allowed to proceed with contraband goods (naval stores) they would be captured and their cargoes used by the enemy, therefore they were detained by the commanding officer till a more opportune time; that they had the option of discharging their cargoes, for which the Confederate government would compensate them;² that detention solely in self-defense, accompanied by an offer to indemnify at the rates established by the law of nations, showed the Confederacy's desire to protect neutrals. To this the consul replied that he must inform the Foreign Office that this detention, though continued by the Confederate government, was due to the illegal conduct of the citizens of Wilmington, but for which they would have gone before the port was blockaded. November 13 he prodded Mr. Hunter again, saying that McRae informed him that there had been no blockading force off Wilmington for some days; still General Anderson would not let the vessels go, and doubted if he could before the end of the blockade.³ The consul could not credit this, as the *Rowena*, a Confederate vessel of greater draught than the British vessels, had the week before left Charleston

¹ *Letter Book*. The errors were in the letter book, and are not due to the copyist. In a letter of Nov. 5, 1910, Mr. Connor called my attention to them, and assured me that the copy was *verbatim et literatim*.

² Benjamin's instructions to Anderson to this effect are in *O. R. A.*, 4, i, 769.

³ The War Dept. corrected this impression, Nov. 13. See *O. R. A.*, 4, i, 769.

for Liverpool carrying *naval stores*. The blockading force off Charleston was greater than that off Wilmington, so why, then, could not the *Bruce* and *Napier* leave if the *Rowena* did? On the 18th he was notified that the War Department had issued the necessary orders for their departure.¹

The only other correspondence Consul Bunch had with Governor Clark was in March, 1862, regarding Robert Gadd, who claimed to be a British subject and had been enrolled in Cabarrus County. The Governor instructed the colonel of the regiment to ascertain whether or not Gadd had voted or declared intention of becoming a citizen; if convinced that he was a foreign subject, the colonel must discharge him. Governor Clark sent Mr. Bunch a copy of this order and said several British subjects had appealed directly to him, whereupon he ordered inquiries at once, and if they were really foreign citizens, their rights were respected.²

From North Carolina, as from the other states, several appeals were made to the central authorities for the release of conscribed Englishmen, but unlike the other consuls, Bunch did not give the Department time to make inquiry through the usual channels; he was constantly writing to hurry them up. Of the cases occurring in the vice-consulate of Wilmington, that of Cueto and Carfoot³ was the most important with which Bunch was connected, though he left the South before it was concluded. November 27, 1862, he wrote Secretary Benjamin that Gabriel Cueto, of Edinburgh, who had come to America as correspondent of a Scotch newspaper, was in the military prison at Salisbury

¹ *Pickett Papers*.

² *Letter Book*.

³ Most of the data will be found in *O. R. A.*, 2, v, 775-865; a few items have been drawn from the *Pickett Papers*.

without any charges having been brought against him. He was debarred from writing, but had smuggled a letter to Bunch, in which he said another subject of Her Majesty, John Carfoot, was in the same plight. Mr. Bunch demanded an investigation, which the State Department requested the Secretary of War to order. Bunch got impatient, as usual, but found that Seddon had sent the report of the investigation to Moore, who had not forwarded it to Bunch. This report showed that Cueto had no passport, alleging that he did not get one in Washington because W. H. Russell had so much trouble after his mission became known. Later he asked Goolrick for one, but was told by that official that he had no power to issue one. When arrested, Cueto had used incendiary language, which occasioned his detention. There was no objection to delivering him to the consul, on condition that he leave the country.

Cueto being disposed of, Mr. Bunch again inquired about Carfoot (December 28). Mr. Benjamin asked Secretary Seddon to hurry up the inquiry so as not to give the appearance of unnecessary delay of justice. Next week General Winder wrote Moore that Carfoot was released and the documents would be forwarded as soon as received. Moore again delayed the transmission, and Bunch wrote (January 30), calling attention to the "grave responsibility which will undoubtedly attach to those who have confined a subject of the Queen for upwards of nine months without affording him an opportunity to prove his innocence, if indeed any charges have been preferred against him".¹ Early in February Assistant-Secretary of War Campbell sent reports showing that Carfoot had been arrested in April, 1862, near Newberne, where he was supposed to have come with General Burnside's troops. There seemed sufficient evidence to

¹ *O. R. A.*, *loc. cit.*, 823.

warrant his arrest for attempting to get cotton into the Federal lines, and he was sent to Salisbury. Since his release he had remained there at work, having taken the oath of allegiance to the Confederacy. March 4, Acting-Consul Walker wrote that Carfoot denied taking any such oath. So the Secretary of State instituted another inquiry, which revealed that previous to his arrest Carfoot had been an engineer on a Confederate boat and a mechanic in the Ordnance Department. During his imprisonment he had been allowed the "parole of the grounds"; his release was unconditional, no oath having been imposed. At that writing he was employed on a local railroad. In communicating this to Walker, Assistant-Secretary Washington said Carfoot's written statement that he had been "employed in the military service of the Confederate States" (*i. e.*, Ordnance Department), *ipso facto*, forfeited any claim to British protection.¹ This drew from Mr. Walker an indignant protest. He said that Her Majesty's proclamation warned subjects against the military service of either belligerent; he failed to see how a common laborer, who must earn his living, was any more in the military service working in a shop superintended by an ordnance officer than were the women who kept books in the Quartermaster's Department. Furthermore, "Her Majesty was not estopped by that proclamation from relaxing any rules thereby laid down, when special cases rendered such relaxation proper". Nor was she to "learn from other governments to whom it is proper for her to extend her protection"; nor did "such suggestion come with good grace from those benefiting by the labor of the parties". He thought Mr. Washington's remarks were uncalled-for, but as there were other cases in which the same position had been taken, Mr. Walker de-

¹ *Pickett Papers.*

sired to put on record his objections thereto.¹ Clearly, he had succeeded to much of Mr. Bunch's zeal and all of his tact. The State Department did not condescend to notice this ebullition.

By the same mail Mr. Walker presented the case of J. J. Henegan, of Charlotte, as an illegal enlistment. In the previous October, while Mr. Bunch was absent, Walker had written to the commandant of Camp Holmes, near Raleigh, about Henegan and Michael Quinn, both of whom had been conscribed, though holding consular certificates of British origin. He said these certificates were sufficient to secure release in Charleston, and hoped Major Mallett would take the same view; if not, would he please keep the men in the camp of instruction until the acting-consul could appeal to Richmond? Mallett replied that he was informed that both were citizens of Charlotte, in business, and exercising all the rights and privileges of citizenship. The evidence of the sheriff and the clerk of the court showed that Quinn had voted twice, therefore he was liable for service. There was no such evidence in Henegan's case. There was no intention to impress foreigners, but he could not release them unless Mr. Walker got orders from higher authority. Mr. Walker said Major Mallett misunderstood—he did not want them kept in arrest but left at large, as it was difficult to secure compensation for detention if the appeal were favorable, while if it were unfavorable, the Confederacy could suffer no detriment. Major Mallett referred the case to the War Department and Walker to Benjamin. The two Departments conferred, and Secretary Randolph had ordered Henegan discharged. Now, said Walker, he had been again enrolled, and the mustering officer said the consular copy of Randolph's order was "inauthentic and in-

¹ *Pickett Papers.*

complete". So Mr. Benjamin secured an order from Secretary Seddon exempting Henegan from the operation of the Conscription Laws.

In June Walker sent a daguerreotype of one T. P. McGinn (or McQuinn), with McGinn's affidavit of nationality and two corroborative affidavits. He thought McGinn was in the 27th North Carolina. Next month Mr. Seddon sent a report from the colonel of that regiment declaring that no such person had ever been a member of it. Walker said he had discovered his mistake, but had trusted that the commandant of conscripts would correct it, as the latter had assigned McGinn to the gunboat *North Carolina*; at present, he thought McGinn was in the hospital at Wilmington. Secretary Mallory reported in August that "T. P. Quinn" had been sent to the receiving ship *Arctic*, where he had shown no objection to his duties (as fireman) or to his conscription. From the *Arctic* he was transferred to the *North Carolina*, but in July deserted from the hospital. So Walker got some more affidavits of McGinn's British nationality, and one from the paymaster of the *Chicora*, identifying the daguerreotype. With these he sent a statement that McGinn was at work in a foundry in South Carolina, being afraid to return to his home until released from the gunboat service. The Department replied to this appeal briefly but pointedly, by sending another certificate of McGinn's desertion.¹

The next case reported was in July, 1863, when McRae informed Walker that seven British subjects had been arrested as conscripts by General Whiting's² order, and six of them had been sent to Camp Holmes. On Walker's in-

¹ *Pickett Papers*.

² Major-Gen. W. H. C. Whiting, in command at Wilmington since the autumn of 1862.

quiry at the War Department, he was told that Whiting had ordered all conscripts and all foreigners sent to camp for examination, that all who were liable might be enrolled. Appeal lay from Camp Holmes to the commandant of conscripts, thence to the Conscription Bureau, thence to Secretary of War; but the assistant-secretary admitted that Whiting's method of procedure was irregular.

There were a few other similar appeals for the persons of British subjects, only one more of which need to be noted here, as being the last such from North Carolina and of somewhat different nature from the usual run. September 25, 1863, Mr. Walker informed Secretary Benjamin that two British subjects had been arrested for attempting to leave the Confederacy without permission. He had no complaint to make against this, as the necessities of war may have required it, but McRae reported that as a condition of their release General Whiting demanded that they take the oath of allegiance. Mr. Benjamin requested that the oath be so modified as merely to bind them not to act against the Confederacy, without requiring them to abjure their allegiance to the Queen.

Mr. Walker's most remarkable tilt with Whiting was in regard to the British schooner *Harkaway* or *Victoria*. She was registered in November, 1862, as the *Harkaway*, at Nassau, by one Farrington, of that port. She ran the blockade to Wilmington and was libelled in December in the Confederate District Court by Davis *et al.*, who like Farrington were British subjects. They claimed that in July they had sent her out as the *Victoria* from Shallotte, North Carolina. She had been captured and was condemned by the United States prize court at Key West, where Farrington had bought her. The Davis group claimed that the decision of a United States court did not invalidate their title. Judge Briggs ordered the marshal to take charge of her,

and appointed Vice-Consul McRae one of the assessors, who appraised her at \$6,000. Mr. Walker said that the claim of Davis was contrary to a principle of international law which was recognized by all nations, so he could not imagine that the Confederate Government would refuse to recognize it. The case was returnable at the June term at Salisbury; meanwhile Mr. Walker learned that the military authorities at Wilmington had seized the vessel, had partially dismantled her, and were using her to transport stone to obstruct the river. He demanded her release, without waiving any claim for damages.¹ By the same mail he made a similar demand of General Whiting, who replied that he was not aware that the Confederacy had recognized Mr. Walker as Her Britannic Majesty's representative. He continued: "Her Majesty's Government has certainly not recognized the Government of the Confederate States. I decline, therefore, to discuss the subject with you or to release the vessel, but will forward your communication to the Secretary of State and await orders. In the meantime, as Her Britannic Majesty's Government does not recognize the jurisdiction of the Confederate States here, and the United States Government claims it, perhaps it would be as well to apply to the latter."² He wrote Mr. Benjamin that the circumstances of the seizure were independent of either claimant. The vessel was in port at the time of the threatened attack on Beaufort, so he took her under appraisement and still had her in active service. He did not consider it any part of his duty "to comply with a peremptory demand of a foreign agent whom I do not know in the premises and whose Government does not recognize mine".³ Mr. Benjamin approved his course, as Walker had not then been recognized as a British agent.

¹ *Pickett Papers*.

² *O. R. A.*, 1, xviii, 1056.

³ *Ibid.* 1, li, pt. i, 708.

The suit came up in June and was continued from term to term till November, 1864. The next term would have been in May or June, 1865, but the *Harkaway* was probably amongst the vessels destroyed by the Confederates when they evacuated Wilmington in February, 1865.¹

¹For the records of the Confederate Admiralty Court I am indebted to the courtesy of Mr. S. P. Collier, Clerk of the U. S. Dist. and Circuit Courts at Wilmington. For the destruction of the shipyards, *etc.*, see N. Y. *Herald*, Feb. 28 and March 13, 1865.

CHAPTER VI

CONSULAR ACTIVITIES IN SOUTH CAROLINA

IN the office at Charleston, Consul Bunch had the assistance of H. Pinckney Walker, whom he had appointed vice-consul in 1860, with Lord Russell's approval.¹ Walker's duties were mainly clerical and notarial, except when Bunch was absent, on official trips or at his summer home in the mountains. We saw in Chapter II that Bunch was popular, both with the Carolinians and with the British residents. Visiting Britons enjoyed his hospitality, one of whom (W. H. Russell) dined at his house with the leading secessionists, who, from their conversation, evidently considered Bunch one of their number.²

Of his industry there can be no question, but his zeal sometimes outran his discretion, as shown by some of his letters to Governor Clark and the State Department. In common with the other consuls, he frequently requested copies of laws, proclamations, judicial decisions, *etc.*, to send the Foreign Office, and from time to time received circulars about the exchange of prisoners, the state of the blockade, and similar matters.³ From the assembling of the Secession Convention Bunch kept the Legation and the Foreign Office fully informed of the progress of events in South

¹ *Pickett Papers*.

² *South in the Making of the Nation*, iv, 526.

³ Secy. Randolph asked Gen. Lee to rush his dispatches as the British and French consuls were holding their mails for official information about the battle of Gaines' Mill. *O. R. A.*, 2, iv, 800.

Carolina. We saw in Chapter II the results of his action about the custom-house and the Declaration of Paris.

He did not have so much trouble about the enlistment of British subjects in South Carolina, because in November, 1861, he secured from Governor Pickens an order directing that any person enrolled should be discharged upon the presentation of a consular certificate of his foreign citizenship.¹ But his successor had some trouble, and Bunch had a passage at arms with the Confederate authorities. In May, 1862, he wrote Mr. Benjamin a long and tactless demand² for a definition of the Department's position, detailing at length his opinion and rejecting that of Attorney-General Watts, and quoting instructions from the British Legation at Washington, which were issued by Lord Lyons in November, 1861. Bunch had sent an application for instructions, which Lord Lyons forwarded to the Foreign Office. The response was the circular of which Moore and Bunch sent Benjamin copies in November, 1862.³ Meanwhile Lord Lyons sent the consuls the following, November 12, 1861:⁴

With reference to my previous instructions to you on this subject, I have to state to you that the question which has now practically arisen under very peculiar circumstances is one not admitting of a satisfactory solution by being left to the determination of the ordinary municipal laws, and courts of the several States, as might be the case under ordinary circumstances.

Whilst Her Majesty's Government might be well content to have British subjects voluntarily domiciled in a foreign

¹ *Pickens-Bonham MSS.* in Library of Congress. Also see *Charleston Courier*, Nov. 11, 1861.

² *Pickett Papers.*

³ *Cf. supra* p. 84.

⁴ The entire dispatch is in *Sessional Papers*, 1864, lxii, 414. "This subject," *i. e.* of Bunch's dispatch of July 31, which Lord Russell had referred to the Law Officers of the Crown.

country liable to all the obligations incident to such foreign domicil, including, where imposed by the municipal law of such country, service in the militia or national guard or local police, for the maintenance of internal order, or even, to a limited extent, for the defense of the territory from foreign invasion, it is not reasonable to expect that Her Majesty's Government should in the present state of things in this country, remain entirely passive under the treatment to which, it appears, British subjects are actually exposed in some of the states ; such, for instance, as being embodied and compelled to serve in regiments, perhaps nominally of the militia, while they would be really exposed not only to the ordinary accidents and chances of war, but also to be treated as rebels and traitors in a civil war, involving many questions in which they, as aliens, cannot simply by reason of their domicil, be supposed to take interest, as to which they may be incompetent to form an opinion, and in the determination of which they are precluded from freedom of choice and action. No state can justly frame laws to compel aliens resident within its territories to serve against their will in armies ranged against each other in civil war, and *a fortiori*, in the absence of any such law they cannot enforce the service.

After remarking that up to July 4th no application by him or a consul for the discharge of a Briton enlisted against his will had been refused, he continued :

Her Majesty's Government, therefore, concluded that the desired exemption is practically conceded. Should this, however, not continue to be the case, Her Majesty's Government will consider whether it is not expedient to invite those foreign Governments which are interested in this question to unite with them in such representations as may be likely to secure to aliens the exemptions which would now be so highly desirable.

Her Majesty's Government assume that there is no hope of securing in practise, especially in South Carolina, any legal decision of a competent Court favorable to the exemption as a matter of right.

Fortunately Bunch did not quote the whole letter, or instead of silent contempt, his request might have been met with such action as Moore had experienced. Lord Lyons did not disclose the reasons for the assumption of his last paragraph. He probably intended the letter to be used as a guide, as Bunch did use it, but later some of the other officials quoted it too literally.

While Bunch was having this correspondence with Benjamin, H. B. M. S. *Racer*, Captain Lyons,¹ called at Charleston and took Bunch on a visit to Savannah.² While there Mr. Bunch visited Fort Pulaski, a proceeding which alarmed an anonymous correspondent of the *Herald*³ exceedingly. This writer said he had lived in Charleston and knew all the local conditions thoroughly, hence he believed that Bunch had been sent by the Confederates and would tell them all about the effects of the bombardment of the fort. It would have been just as well to let Davis or Beauregard go, for the correspondent had observed that after each visit of Bunch to the blockading squadron a vessel ran the blockade. Further, he affirmed that the consul and vice-consul were often closeted with the Confederate generals, so he wished to know why any such person as Bunch was allowed to hold a consulship anyhow. Evidently the correspondent had not read the letters Mr. Adams sent Lord Russell.

In November General Whiting, commanding the Confederate forces at Wilmington, sent General Jordan (chief of staff at Charleston) three negroes, who were part of the crew of a vessel from Nassau which had run aground in trying to run the blockade near Wrightsville, N. C. The blockading vessel sent a party to seize the crew, but the

¹ Algernon Lyons, a brother of the Minister.

² *O. R. N.*, xiii, 27.

³ *N. Y. Herald*, June 16, 1862.

Confederate pickets captured the captors. As these negroes were helping bring salt into the Confederacy, General Whiting wished to encourage their laudable activities by helping them get home. So he requested General Jordan to deliver them to the British consul. Arrangements were made with Fraser & Company to give the negroes employment on one of their vessels.¹

As he failed to secure from Mr. Benjamin the ruling he requested in May, Bunch appealed directly to the War Department in December. The impression he made on the Department is indicated by an employee's comment: "A Mr. Bunch, British Consul, has written an impudent letter to the Department, alleging that an Irishman, unnaturalized, is forcibly detained in one of our camps. He says his letters have not been answered, which was a great discourtesy, and he means to inform Lord John Russell of it. The letter was replied to in rather scathing terms as the Irishman had enlisted and then deserted. Besides, we are out of humor with England now and court a French alliance."² The reply was by Assistant-Secretary Campbell. After acknowledging Bunch's letter saying that J. E. Haley (or Hurley) had been forced into camp at Knoxville, and threatening to call Lord Russell's attention to the "increasing and apparently systematic persecution to which of late Her Majesty's subjects have been exposed", Mr. Campbell enclosed a copy of General Orders, No. 82, which included the Conscription Laws of the Confederacy. These laws, he pointed out, were necessary to provide forces to meet the 700,000 troops of the Union Army. The laws retained in service all those already there, between eighteen and

¹ *O. R. A.*, 1, xviii, 780-3.

² Jones, *Rebel War-Clerk's Diary*, 1, 217. Campbell's reply is in *O. R. A.*, 4, ii, 238; the orders he quoted same volume, 160, and 4, i, 1094 *et seq.*

thirty-five, and authorized the President to put in service all residents of the same ages, not legally exempt. However, the War Department had discharged at the end of their enlistments all undomiciled foreigners who had volunteered, and had declared exempt aliens who were not domiciled. "Several hundred foreigners were thus discharged under this construction of the Act, and the same interpretation serves as a shelter to a very large number of aliens who were previously regarded as permanent residents of these States." In July the Department had prohibited the reception of unnaturalized foreigners as substitutes, and in September enrolling officers had been explicitly ordered not to enroll non-domiciled aliens. The Confederacy did not consider long residence domicil unless there was ample evidence of intention to remain permanently, with abnegation of allegiance elsewhere. Mr. Campbell felt that there could be no mistake in the principle which had guided the Department, and as there was no British minister or any other accredited diplomatic agent in the Confederacy, he felt under no obligation to discuss or defend it. He pointed out the method of appeal open to a conscript: as Haley had not availed himself of it, it was to be presumed that he had acquired a domicil. Mr. Campbell was at a loss to understand what Bunch meant by discourtesy, as all such complaints had been attended to as if he were regularly accredited to the Confederate Government.

The laws referred to by Campbell were those cited in Chapter IV.¹ They were published in General Orders 30 and 82 of the Adjutant-General's Office. The former contained instructions for the "enrollment and disposition of recruits", the latter for "commandments of conscripts and camps of instruction". Congress exempted the physically

¹ Cf. p. 92, *supra*.

and mentally deficient, State and Confederate officials, clergymen, physicians, transportation, telegraph and newspaper employees, artisans in the public employ, Quakers, Dunkards and others of similar belief, though such must procure substitutes or pay \$500. The fourth section of the instructions to commandants of conscripts was as follows:

Foreigners not domiciled in the Confederate States are not liable to conscription. Domicil in the Confederate States consists in residence with intention permanently to remain in these States, and to abandon domicil elsewhere. Long residence, of itself, does not constitute domicil. A person may acquire domicil in less than one year, and he may not acquire it in twenty years. If there be a determination to return to the native country and to retain the domicil there, no length of residence can confer domicil. The principal evidences of intention to remain are the declarations of the party, the exercise of rights of citizenship, marriage and the acquisition of real estate; but the intention may be gathered from other facts.¹

Hurley, the conscript in question, was discharged, but got into trouble again next year.

The British man-of-war *Cadmus* arrived at Charleston in December, 1862, to take away any British subjects who wanted to leave, as Lord Lyons had been informed that Charleston was to be reduced. Captain Ross, commanding the *Cadmus*, told Bunch that the *Petrel* would soon arrive to observe the siege.² During the *Petrel's* sojourn Commodore Ingraham attacked the blockading squadron, and General Beauregard telegraphed Richmond that the whole Federal fleet was sunk, captured or dispersed, and he was

¹*O. R. A.*, 4, ii, 164. For the "Acts to further provide for the public defence," see *Statutes at Large*, 1st Congress, 29, 62, 77.

²*O. R. N.*, xiii, 479.

going to announce the raising of the blockade. Accordingly, January 31, 1863, General Jordan, chief-of-staff, so informed the French and Spanish consuls, and offered them the use of a gunboat if they wished to see for themselves. They accepted the offer and saw three Federal vessels returning to their posts, but the Spanish consul said Bunch had told him that there were no blockaders in sight for several hours after the attack. The various consuls and Captain Watson of the *Petrel* seem to have met and decided that the blockade was legally raised as claimed in the proclamation issued by Beauregard and Ingraham. Mr. Benjamin also sent all the consuls in the Confederacy a circular announcing that the blockade of Charleston was raised and that the law of nations required a formal notice of its reestablishment,¹ but the New York *Albion*² was of the opinion that Federal prize-courts would ignore this interruption.

Having seen a statement purporting to come from Consul Bunch and the commander of the *Petrel*, that they had gone five miles beyond the usual anchorage of the blockaders, but even with good glasses could see none, the officers of the 176th Pennsylvania and the captain of the transport *Cossack* wrote Admiral DuPont that they had entered the harbor about an hour after the firing ceased, and conversed with some of the officers of the blockading squadron. They pronounced the statement of Bunch and Watson false, and said "that it would require a powerful glass truly to discover one particle of truth or honesty in the composition of these gentlemen".³ The New York *Times*⁴ considered the alleged paper of the consuls a "rebel fabrication", and

¹ *Pickett Papers*. Charleston *Courier*, Feb. 5, 1863. ² Feb. 7.

³ *O. R. N.*, xiii, 577-633, for this and the correspondence of the Union and Confederate officials.

⁴ March 3. Also see the *Albion* for Feb. 21.

the attempt to break the blockade futile, but the *Herald*¹ thought the consular manifesto showed a preconcerted plan between Confederates and consuls, probably with European connivance. Like Mark Twain, on reading of his own death, the officers of the squadron considered the reports of their destruction exaggerated, in which opinion one of the engineers of the C. S. S. *Chicora* appeared to concur, as he wrote to a friend that "the upshot of the affair was a good but of glory, but not a prize nor a ship destroyed. . . . They say we raised the blockade, but we all felt that we would rather have raised hell and sunk the ships."² Captain Ross, of the *Cadmus*, was friendly to the United States, and he and Captain Godon, of the U. S. S. *Powhatan*, tried to persuade Captain Watson that he had made a mistake, and they wanted him to recall his message to Lord Lyons saying that the blockade was raised. Watson was inclined to the Confederates and refused to be convinced. As another Federal officer received similar information from Ross concerning Watson's attitude and action, Admiral DuPont wanted the Secretary of Navy to order the *Petrel* out of Charleston harbor.³

The *Cadmus*, after taking the British subjects away, returned February 2, with orders for Bunch and his family to embark. General Beauregard telegraphed the President and the governor of South Carolina that this must portend an immediate attack on the city, so he wanted more troops. Secretary Seddon forwarded the telegram to General Lee.⁴ Governor Bonham having received earlier notice from Mr.

¹ Feb. 5.

² *O. R. N.*, *loc. cit.*, 623. Also see *Charleston Yearbook*, 1888, appendix, p. 5.

³ *O. R. N.*, *loc. cit.*, 600-603.

⁴ *O. R. A.*, 1, xiv, 760, 764, 850.

Trenholm telegraphed the President that the instructions were for Bunch "to embark with his family as soon as possible, an attack on Charleston being imminent", perhaps within forty-eight hours.¹

Mr. Bunch published a card in the *Courier*, February 5, saying that he had been ordered to return to England, so left Walker in charge as acting-consul. He thanked the people of Charleston for their hospitality and personal kindnesses, to which the editor responded by saying that Bunch's ten years' service had been able and faithful, and that Walker was well qualified to succeed him. Two days later appeared the resolutions of the St. George's Society, regretting the departure of their popular president, and on the 9th a similar paper from the Chamber of Commerce appeared. The *Mercury* of the 10th published a letter from Richmond saying that while some people thought Bunch's recall indicated an attack on Charleston, others were convinced it meant war between Great Britain and the United States. The *Albion* of the 7th said the *Cadmus* was to take Bunch to Halifax, Mr. Lincoln having requested his removal. If so, it was a tardy acquiescence, as we saw Mr. Adams making the demand in the fall of 1861. The Southern papers were probably correct in thinking Great Britain feared unpleasant consequences if Bunch were in Charleston should the Federals capture it. The *Courier* of the 28th tells us that Mr. Walker has just received news of Bunch's arrival in Bermuda.

Mr. Walker's first official act was to acknowledge the receipt of Mr. Benjamin's circular announcing the raising of the blockade. He took this opportunity of saying that Mr. Bunch had been withdrawn, leaving him (Walker) in charge of the office till the pleasure of Her Majesty's Gov-

¹ *O. R. A.*, I, liii, 278.

ernment could be learned. He had some other purely routine correspondence about the receipt of dispatches, besides the cases of Carfoot and Henegan in North Carolina. But in May he asked for the discharge of Hurley (or Haley), who had recently been re-enrolled at Knoxville, where Walker had applied only to learn that Hurley had been transferred to Mississippi. He thought Hurley should be released, as the enclosed certificate showed that he not only was a British subject, but had served an enlistment in the Tennessee volunteers.¹ Walker said Hurley had paid any obligations he owed the Confederacy, and the enrolling officer should have released him on the authority of his consular certificate.²

✓ Now Walker was doing just what Moore had done³—interposing in behalf of a person outside the limits of his consulate, and Secretary Benjamin did not fail to notice it. May 7th he acknowledged Mr. Walker's of the 4th, but before answering it desired to ascertain the extent of the authority vested in Mr. Walker as Her Britannic Majesty's acting-consul at Charleston. He gave the same reasons for not questioning Bunch's *exequatur* that he had given Moore, and added that he had supposed it referred only to Charleston, and at furthest to the State of South Carolina. Mr. Walker had assumed authority since Bunch's departure, but had not presented to the Department any credentials for so doing. He concluded:

Your powers cannot exceed those of your predecessor nor embrace the State of Tennessee in the scope of your duties. To put this question at rest, it becomes necessary for me to request that your authority of whatsoever nature to act in be-

¹ The "Rebel War Clerk" seems to have erred in calling him a deserter. *Cf. supra*, p. 116.

² *Pickett Papers*.

³ *Cf. supra*, p. 86.

half of Her Britannic Majesty's Government be officially submitted to this department in order that the precise nature and extent of your functions may be ascertained before further correspondence can be held with you as an official representative of the British Government.¹

This correspondence occurred about the time Walker was asking Whiting for the *Harkaway*.² Unlike Moore, Walker complied with Benjamin's demand, but not taught by past experience of Moore's dilatoriness, he sent his credentials to that official, to be shown Benjamin. Of course Moore could not present Walker's without showing his own, so he seems to have ignored the matter. When Walker heard of Moore's dismissal he asked General Jordan to obtain permission for him to appear in person. This was granted, and on June 18 Walker visited the State Department, showed his vice-consular commission of 1860, and a letter from Bunch, February 3, 1863, putting him in charge of the consulate till the Foreign Office could be heard from, and instructing him how to act: to keep Lord Lyons posted, to communicate with Royal vessels in time of need, and to put the French consul in charge if he had to leave.³ Mr. Benjamin considered this satisfactory,⁴ but evidently impressed Walker with the importance of obeying the circular about communicating with officials in the enemy's country, for we read that when the *Plover* stopped at Charleston on its way from Bermuda to Fortress Monroe, Walker, having important dispatches for Lord Lyons and being unwilling to violate President Davis's prohibition of direct communication, persuaded the commander to sail for Halifax instead of Hampton Roads.⁵

¹ *Pickett Papers*.

² *Cf. supra*, p. 110.

³ *Pickett Papers*.

⁴ *Richmond Whig*, June 20.

⁵ *Charleston Courier*, Aug. 10.

Presumably he had to drop Hurley's case, as his jurisdiction included only the Carolinas. But July 13, 1863, he wrote General Jordan that Peter McSheeley, an employee at the Arsenal, was then in jail for refusing to join a "volunteer corps now forming, to be called the 'Arsenal Guards'". Mr. Walker continued that he had advised British subjects that militia service in general was incident to foreign domicile, so they must not object when the law required the organization of the militia for the preservation of internal peace and order, but if the militia, either before or after being transferred to the Confederate authorities, should be brought into conflict with the United States forces, no British subject could be expected to serve, as he would be liable to treatment as a rebel and a traitor. He quoted parts of the Foreign Office circular about *ex post facto* laws, referred to the provisions of the Queen's proclamation, and said he had advised acquiescence in all police and patrol service. McSheeley would render all legitimate militia service, but could not join the volunteer organization. Next day the consul sent three more names and said his advice to British subjects was positive, to refuse all overtures to join such organizations, but to acquiesce in what the State law required. General Jordan replied that General Beauregard considered such persons rightly detained, and they would not be released so long as they refused to serve. He was not at liberty to discuss the points involved, as the nature of the argument put them in another Department. He reminded Mr. Walker that the courts were open, and regretted his advising British subjects that they would be treated as *rebels and traitors*; he admitted neither the truth nor the justice of that argument.¹

Mr. Walker sent the correspondence to Secretary Ben-

¹ *Pickett Papers.*

jamin, who turned it over to the War Department. It was naturally referred to General Beauregard, who sent General Cooper a detailed report showing that the persons in question were hired at the Arsenal, and had been required to join the organization as a matter of precaution and discipline. They would not be required to do military service unless he decided that in an emergency they could do the country more good by fighting than by making munitions of war. When they refused to join, not being mechanics or experts, they were put in arrest by Major Trezevant,¹ who could fill their places with better men: they were to remain in confinement until turned over to the enrolling officer.²

The Arsenal Guards was an organization formed in pursuance of orders from Beauregard to provide for pressing emergencies. Trezevant's report showed that McSheeley had served an enlistment in the United States army prior to the war. The report was accompanied by a lengthy discussion of the case, and General Beauregard's view of the international law involved. First, the Arsenal Corps was not voluntary, but part of the regular organization. When the attack on Charleston was impending he had called out the militia to repel invasion, and ordered all men on detached duty to return to their commands; arsenal employees were excepted, as the manufacture of ordnance supplies was of paramount importance. The men in question refused to be enrolled, and showed such a spirit that they could not be retained longer as artisans. Recent decisions of the courts declared them liable to conscription, even if not doubly so by reason of their recent employment. A British ship with a British crew might enter port, directly from a British harbor, without an article of contraband, yet he

¹ In command of the Arsenal.

² *Pickett Papers.*

was told that the consul would not protect them or their property, as they would violate neutrality by running the blockade; admitting that, then the Arsenal employees had forfeited all claim to consular protection, as their service violated the spirit of the Royal proclamation more than service in the field or running the blockade. By accepting hire in the Arsenal they became subject to the Laws and Articles of War, and liable to trial by court-martial, hence not entitled to Walker's protection. The latter's proposition "touching the course of an alien resident when called on to do military duty contained doctrine not only at variance with what is regarded as the rule of public law, but which, when taking the shape of instructions from a consul . . . must be fraught with mischief by impairing the obligations which this Government may impose on alien residents".¹ He believed that Great Britain had asserted to the utmost the right of compelling alien residents to serve, even against the country of their birth, and he refused to take seriously the contention of Mr. Walker that the "obligation . . . to do militia duty ceased just at the moment when it becomes of any value", *i. e.* that British subjects in Charleston were bound to take up arms and to do military duty until the fight commenced, and then, "though it be to repel invasion, . . . they must retire and become mindful of a neutrality concerning which up to that moment they were profoundly indifferent".² Like General Jordan, Beauregard objected to Walker's remarks about "rebels and traitors".

Mr. Benjamin sent Mr. Walker copies of these various documents with the endorsement: "Concurring as this Department does very fully in the views expressed by Gen. Beauregard . . . the action of that General in regard to

¹ *Pickett Papers.*

² *Ibid.*

those persons will not be interfered with by the Government.”¹

The Article of War referred to in the general's report was the 96th, which was as follows: “All officers, conductors, matrosses, drivers, or other persons whatsoever, receiving pay or hire in the service of the Artillery or Corps of Engineers of the Confederate States, shall be governed by the aforesaid rules and articles and shall be liable to trial by courts-martial in like manner with the officers and soldiers of the other troops of the Confederate States.”² The judicial decisions were those of the Virginia, South Carolina, Georgia and Alabama courts, which are summarized in Chapter XII. The consensus was that aliens who had ever served in the Confederate forces, or had continued to reside in the Confederacy for any length of time after the commencement of hostilities, were liable to conscription.³

Mr. Walker was not satisfied with any or all of these expositions, and informed Mr. Benjamin, September 7, that as his compatriots had been discharged on July 27, he had no grievance, but as Mr. Benjamin agreed with General Beauregard, he wished to point out that the Arsenal Corps was organized without legal warrant, and as Major Trezevant was not the proper enrolling officer for either South Carolina or the Confederate States, therefore he wanted Trezevant reprimanded for putting British subjects in jail. Further, the 96th Article of War did not apply to these or any British subjects, as they were not receiving pay in either the artillery or the engineer corps. General Beauregard ignored the difference between military service according to State law and according to Act of Congress, hence

¹ *Pickett Papers*.

² *Regulations for the Army of the Confederate States*, 419.

³ See for some of these decisions, *Charleston Mercury*, Feb. 25 and July 6, 1863; *Richmond Enquirer*, July 10; *Charleston Courier*, July 7.

he erred in requiring Confederate service from those liable only to State legislation. As to the propriety of his interposition, the consul deplored the "lack of magnanimity in those who employ a foreigner and urge that in consequence of that employment he is not entitled to the privileges of his nationality". He concluded by saying that General Jordan had expressed this idea about a subject conscribed in Wilmington, but the Secretary of War had nevertheless discharged him as exempt.¹ This exceedingly tactful letter was silently pigeon-holed by the urbane Benjamin.

In March, 1863, General Beauregard had advised ordering all foreigners not in military service to depart. He had issued a notice, February 17, warning all residents of Charleston and Savannah of the expected attack, and ordering all non-combatants to retire.² In July, Mayor Macbeth, of Charleston, issued a proclamation of the same tenor, and the governor did likewise the next month. In accordance with these warnings Walker retired to the suburbs, but announced that he would be at the consulate daily for the benefit of any who might require his services.³ The occasion of these proclamations was, of course, the closer investment of the city. August 21 General Gillmore demanded the evacuation of Morris Island and Battery Wagner, giving notice that he would open fire upon the city if he did not receive a favorable reply within four hours from the delivery of his dispatch at Wagner. He forgot to sign this letter, which was accordingly returned; it was delivered at Beauregard's headquarters next morning at nine. Beauregard's reply, refusing to evacuate, embodied a vehement protest against Gillmore's course, declaring that shells had

¹ *Pickett Papers*.

² *O. R. A.*, I, xlv, 850. *Pickens-Bonham MSS.*

³ *Mercury*, July 10; *Courier*, Aug. 17 and 24.

been fired at 1 a. m. into the sleeping city, full of women and children; as General Gillmore must know it would take four hours to go and come from Battery Wagner to Confederate headquarters, he was guilty, Beauregard said, of "unexampled barbarity". Of course Gillmore replied in like strain. His dispatch had been shown Walker and the Spanish consul both of whom wrote at once, Moncado requesting twenty-four hours for Spanish subjects to leave, Walker demanding a personal interview. This was refused, but both were informed that the bombardment would be suspended twenty-four hours.¹

Not satisfied with his controversy with General Beauregard, Mr. Walker initiated one with the governor of South Carolina. This was in connection with the service of aliens in the First Regiment, Charleston Guards. Captain Moroso of Company D stated, August 9, 1863, that his company was composed principally of aliens, claiming consular protection, who had volunteered for service in the city, and had been accepted on that understanding; therefore he protested against their being detailed for service on the steamboats on duty in the harbor, as being contrary to their agreement and to their duties to their own governments, as this service was without the city limits.² Colonel Magrath forwarded this to General de Saussure, commanding the Fourth Brigade, S. C. Militia, who endorsed it as follows:

While recognizing how unmilitary is the within communication it is respectfully forwarded . . . from a spirit of forbearance to a militia force, who by receiving a direct reply from

¹ For the correspondence between Beauregard and Gillmore, and between the latter and the consuls, see *O. R. A.*, i, xxviii. pt. ii, 57-62. See also *London Times*, Sept. 9, 1863.

² This letter and the correspondence between Walker and the S. C. officials are in the *Pickens-Bonham MSS.* Unless otherwise noted, quotations are therefrom.

the highest military authority will [be] assured that the laws of the land have been justly applied to them. By the militia laws of South Carolina, aliens are especially declared liable to 'duty after six month's residence.'

General Beauregard returned it with the remark: "The claim of Capt. Moroso can never be entertained at these headquarters. The Commanding General is surprised that such a claim should be made."

About the same time Walker applied to Colonel Magrath in behalf of one Michael Barlow. He informed the colonel that he had advised British subjects to acquiesce in the State militia organization, but informed them that if such organization should be brought into conflict with United States forces, whether it had been transferred to the Confederate command or not, British subjects could not be expected to perform this service. "The tenor of this advice I have communicated to both Gen. Garlington¹ and the State Department at Richmond, and no word of dissent has been returned to me by either."² Barlow had rendered the usual militia service, but now he was detailed for duty on the *General Clinch* plying between the city and the fortifications under attack, which might require a service which "British subjects are most distinctly and positively advised they may not render". Therefore he hoped Colonel Magrath would arrange to dispense with the performance of such objectionable duties. The letter was forwarded to the Secretary of War, who asked the Secretary of State if he had received any such demand from Walker. In the *Mercury* of October 3, under the caption "A Just Decision", the foregoing facts are related, with the statement that Benjamin endorsed upon the report: "The views of Acting-

¹ A. C. Garlington, Adjt.-Gen. of S. C. *O. R. A.*, *loc. cit.*, 608-9.

² The date of this letter was August 16. Benjamin's to Walker approving Beauregard's opinion was dated September 9.

Consul Walker do not meet with the approval of this Department. While the Government claims no military service from sojourners, those who have acquired residence in the Confederacy are bound by law to aid in its defence."

While this was taking its slow course through military channels, General de Saussure sent the letters received from Moroso and Walker to Governor Bonham, with the statement that he had instructed Colonel Magrath that by the Statute of 1839 aliens resident six months were liable to militia duty and by that of 1863 all males between certain ages were liable, therefore Colonel Magrath was to require that the duty be performed; in case of default, to arrest the recalcitrant and prefer charges of disobedience. Whereupon the consul addressed himself to the Secretary of State. As this contention struck at the whole army and militia organization of the Confederate States, General de Saussure had forwarded the correspondence to General Ripley¹ so as to bring the matter to the attention of the State Department, and begged leave to "enclose a copy to your Excellency in order that such action may be taken as may be deemed proper". The same day (August 20) Walker wrote the governor, quoting those parts of Lord Lyons's and Lord Russell's circulars that referred to "internal peace", "rebels and traitors", *etc.*, and referring to the order Bunch had secured from Governor Pickens,² under

¹ Brig.-Gen. R. S. Ripley, Comdg. Second Military District of S. C. *O. R. A.*, *loc. cit.*, 195.

² State of South Carolina.
Headquarters, Nov. 18, 1861.

To Brig.-Gen. de Saussure,
Comdg. 4th Brigade, S. C. M.

Sir: Upon the certificate of any consul of an European Power or on an official statement from any consul's office shewing that a subject of such Power, is included in our militia organization you are hereby instructed to discharge such subject from duty.

F. W. Pickens,
Governor. (*Pickens-Bonham MSS.*)

which he might have had British subjects discharged, but instead had advised them to acquiesce in such militia duty as would not bring them into conflict with the Federal troops. The numerous British subjects detailed for guard-duty on the steamers plying in the harbor were probably exposed to this very danger. In the case of Michael Barlow he had appealed to the colonel, whereupon General de Saussure ordered those refusing such service court-martialed; this was contrary to Governor Pickens's order and the consul's instructions, therefore he protested and requested Governor Bonham to make arrangements to dispense with such service.

Owing to the governor's absence, this letter was not read until Walker reminded him of it September 2. Governor Bonham then requested a copy of the Pickens order, upon receipt of which he replied it could not "be regarded as binding upon this Department at this juncture, even if the circumstances were precisely the same. What motives led to it I cannot undertake to say, but am persuaded that it was not issued because he felt the militia law of this State required it." Governor Bonham found that Section I of the Act of 1839 provided that free white aliens or transient persons between eighteen and forty-five years of age, resident for six months in South Carolina, were liable for militia duty within the district of the regiment to which they might be attached. "The guard-duty on board of certain steamers that are plying from the city to the several fortifications in the harbor, now under attack, is performed entirely within the district of Charleston and is within the letter and the spirit of the law." He saw no grounds for the consul's fear that such British subjects were liable to treatment as traitors, *etc.*, as under the militia laws they would be as efficiently protected as citizens of South Carolina: so far there had been no attempt

to treat thus the citizens of any Confederate State. "These troops have been organized under the militia laws of this State and are subject to the orders of the Confederate General commanding this Military Department, but I feel it due to state the grounds which would have constrained me at any period of the progress of this organization respectfully to decline issuing such an order as you ask for."

Mr. Walker regretted this decision and the ignoring of Governor Pickens's order, and could not perceive any change of circumstances which justified such a course. The argument given Governor Pickens,¹ said Walker, was that no state could justly frame laws to compel resident aliens to serve against their will, and *a fortiori*, in the absence of such laws could not enforce such service, and he submitted that "this reasoning is equally forcible now". As to the Act of 1839, he found that the Act of 1841, codifying the militia laws, repealed all previous laws and did not reenact that particular clause (Sec. I) of the Act of 1839, nor did he find in any subsequent enactments such liability of aliens decreed; therefore such service could not be required or enforced.

The governor asked the opinion of Attorney-General Hayne,² who found that previous to 1841 aliens were desig-

¹This statement is open to doubt. Though Lord Lyons' circular containing such instructions was dated a week before Gov. Pickens' order, in the conditions of the mail and messenger service then existing it is rather improbable that Bunch received it in time to present its substance to Gov. Pickens. There are numerous entries in the *Pickett Papers* showing that it took from three to five days for letters to go from Charleston to Richmond. *Cf. supra* pp. 113 and 118.

²I. W. Hayne, grandson of Col. Isaac Hayne of Revolutionary fame, cousin of R. Y. Hayne, Atty.-Gen. of S. C. since 1848, special commissioner sent by Gov. Pickens to Washington in 1861. See the article by T. D. Jervey in *S. C. His. and Gen. Magazine*, v, 183.

nated as subject to enrollment, but in neither the Act of 1841 nor in that of 1863 were they specifically mentioned, though implied, as the former said "all free white men above the age of 18 who have resided in the State at least six months", and the latter declared that the militia embraced "all males residing in the State, between the ages of 16 and 60". These two acts constituted the existing militia law, and he thought they were "comprehensive enough to include aliens and should be so construed",¹ unless aliens were exempt by clear and acknowledged principles of international law, in which case the legislature presumably intended "general expressions" to be "subject to such modifications as would render their provisions consistent with the law of nations". He had not had time to make an exhaustive examination of this point, but cited the elaborate exposition of Judge Magrath (with which he concurred), according to which aliens were liable for service in the organizations confined to their district, or *for defence*, in any part of the State, if within the specified age-limits.² In forwarding the opinion (October 4), the governor remarked that Mr. Walker had been correct about the Act of 1839, but the order of Governor Pickens was issued under a totally different militia organization from the one now existing. The present executive adopted the opinion of the attorney-general and enclosed an act of September 30, 1863, affecting aliens.

The legislature had been convened in extra session September 21 principally to provide additional funds and forces. The governor's message pointed out the pressing need for

¹ He might have added that the circular of the Executive Council (Apr. 24, 1862), in regard to militia enrollments did not include aliens in the list of exemptions.

² For the opinion itself see the Charleston papers, July 6 and 7, 1863, the Richmond papers of the 10th or the London *Index* of Aug. 20. For a summary see Chapter XII.

more troops and recommended amongst other things "that the law be so amended as to place in some militia organization for the defence of the State every able-bodied citizen between the ages of sixteen and sixty, not in the Confederate service or otherwise legally exempted, . . . and all persons who procured exemptions by furnishing substitutes. All aliens who have declared their purpose to become citizens, as also such as are domiciled amongst us, enjoying the protection of our laws, should be included."¹ Accordingly the legislature passed an act, September 30, which specified that "for the purpose of suppressing insurrection and repelling raids, the governor be authorized to enroll all white male persons in this State between the ages of eighteen and forty-five years, including all persons who have furnished substitutes in the Confederate service, resident aliens, and other persons who have avoided Confederate Conscription".²

Apparently Walker had done his clients more harm than good by his appeal from the military to the civil authorities; but a week after the receipt of the governor's letter, which he forwarded to the Foreign Office, he said the recent statute made a new protest necessary. He said he was instructed to urge that the "plainest notions of justice and reason forbid that a foreigner . . . should be suddenly, and without warning, compelled . . . to take an active part in hostilities."¹ . . . And I have the honour also to represent that the order of Governor Pickens . . . which your Excellency has concluded is no longer entitled to respect, has, nevertheless, given to Her Majesty's subjects the assurance, in as

¹ For the call and message see *Charleston Courier*, Sept. 15 and 24, *Mercury*, 22 and 24; the message is also in Moore's *Rebellion Record*, vii, 506 *et seq.*

² *S. C. Statutes at Large*, xiii, 148 *et seq.*

³ See the Foreign Office circular quoted in Chapter IV.

plain and strong terms as it was, or is, possible for the Chief Magistrate of this State to express himself in [*sic*], that the Subjects of Her Majesty are not to be included in the Militia organization of this State, and if included, that they are to be discharged from duty." Therefore, he thought it "manifestly unjust" that the legislature, "assembled in Extra Session, at short notice, acting . . . in violation of the principles of International Law, which the State surely acknowledges its obligations to observe", should have entirely changed the status of the Queen's subjects who had become "involuntary inhabitants" because of the blockade and military lines, "and without any option being offered them to quit, or any official intimation of any change of purpose being given, should have declared them resident aliens; should have subjected them to service in the armies of the State; and should have made them amenable to the articles of War of the armies of another Government". Accordingly he requested the governor's "serious attention" to these views, with an eye to adopting some measure to "relieve Her Majesty's Subjects of the recent Legislation: and in particular to give them permission and opportunity to leave the State in which they are no longer to be allowed to observe the Neutrality enjoined upon them by the orders of their legitimate Sovereign." Before the governor could reply to this outburst of righteous indignation Mr. Walker had received his *quietus* from Mr. Benjamin.¹

Viewed only in the light of the correspondence with Walker, the Act of September 30 has undoubtedly the appearance of vindictive and *ex post facto* legislation. But it must be remembered that just at this time Charleston was being bombarded; in the vicinity of Port Royal, Northern

¹ See Chapter XII.

officers were organizing negro troops; Gettysburg and Vicksburg were recent events; Confederate money was worth eight cents on the dollar.¹ Naturally the State felt desperate. Furthermore, the blockade, which Walker complained of as interfering with the departure of Englishmen, South Carolina felt would have been abolished long ago if England had lived up to the Declaration of Paris. As for warning, they probably considered that the decisions of the courts and the governor's message were warning enough for those who had not chosen to go when the *Cadmus* gave them the opportunity. Many of them had taken out naturalization papers for "business reasons" yet considered themselves "British subjects in loyalty and feeling".² This drastic statute must be viewed simply as a "war measure", like the suspension of *habeas corpus*, the impressment of supplies, the issue of emancipation proclamations, or the destruction of property to save it from the enemy, and must be justified or condemned on its merits as a war measure.

¹ Wood, *Confederate Handbook*, 76.

² *Sessional Papers*, 1862, lxii, 592.

CHAPTER VII

CONSUL *versus* GOVERNOR IN GEORGIA

THE consulate of Savannah included the whole State of Georgia. Prior to 1857 there had been a consular agent at Darien, but on the death of the incumbent in that year, the office lapsed, and the whole consulate was supervised by the Savannah office.¹

In the light of the previous pages, it is somewhat startling to find it stated in Parliament that the consuls in the South were indifferent to the sufferings of the Queen's subjects. Yet that is the thesis of Mr. Duncombe, who informed the Commons, May 28, 1861, that the captain of a British merchantman had been tarred and feathered in Savannah, and that British subjects were daily impressed, neither their lives nor their property being safe in the Confederacy. Bernal Osborne characterized these statements as "old wives' tales", and Lord Russell said that the tarring and feathering had occurred before the war broke out, and that though rumor gave this captain an unsavory reputation, the consul had done what he could to protect him.² Seven weeks later, Mr. Duncombe returned to the charge fortified with a letter dated New York, June 21, 1861, in part as follows:

We have several Englishmen here, who have experienced the tender mercy of Southern hospitality, and also the inutility of any appeal to our consuls at Southern ports. Three or four

¹ See *Reports on British Consular Establishments* (1872), pt. iv, 84.

² Hansard's *Debates*, Series 3, vol. clxiii, 190 *et seq.*

complain most bitterly of their treatment and state that they had to escape concealed in the cargo of steamers, and had appealed in vain to the consuls.

One intelligent young man spent some time in Savannah, and was present at the period of the tarring and feathering of an English captain, and he assures me that he saw there the Consul wearing Secession colors . . . I understand the British Consul at Savannah in the right of his wife is a slave-holder, and I cease to wonder no proceedings can be taken in defence of Englishmen.¹

Lord Russell replied that he had received no complaint against any consul, but on the contrary, this case of tarring and feathering was reported by a consul. As it had occurred before Secession, it had nothing to do with the Confederacy. Mr. Duncombe interrupted to say that it occurred in May; Lord Russell continued to the effect that the consul had done all he could to restrain the mob. The Foreign Office had heard nothing of the consul's wearing Secession colors, which would have been highly improper.² Both gentlemen probably had in mind an event which occurred February 6, 1861, about three weeks after Georgia seceded. The captain of the *Kalos* for some reason let the negro stevedore eat his dinner in the captain's cabin. The mate seems to have misrepresented this to the people on shore; consequently the "Rattlesnake Club", a secret society (which the *Albion* compared to the "Dead Rabbits" of New York, and the "Plug Uglies" of Baltimore), tarred and feathered Capt. Vaughan. The local press denounced this outrage, the mayor of Savannah offered \$500 and the consul \$1,000 for the apprehension of the offenders, who had been disguised.³ This consul was Edward Moly-

¹ Hansard, *op. cit.*, clxiv, 778 *et seq.*

² *Ibid.*

³ N. O. *True Delta*, Feb. 14, 1861; N. Y. *Albion*, Feb. 16.

neux, who had been at Savannah since 1832. He was a successful merchant, owned a summer home in the mountains of North Carolina, and according to Mr. Duncombe's informant, his wife was a slave-owner.¹ Next month when Governor Brown seized some New York vessels as a reprisal for the arms seized by the New York police, Mr. Molyneux induced him to release one whose cargo was owned by British subjects.²

Shortly after this Mr. Molyneux went on a visit to England, leaving in charge the vice-consul, Allan Fullarton, whom we saw in Chapter II informing Molyneux of the blockade.³ In July Fullarton informed Secretary Toombs that he was in charge while Molyneux was in Europe, and requested copies of proclamations, Acts of Congress, *etc.* Mr. Toombs, on the very day that he resigned, wrote Fullarton, promising to comply with the request.⁴ The promise was kept by Mr. Toombs' successors.

Fullarton made use of a Royal vessel to call on Lord Lyons in September, shortly after which Mr. Molyneux returned by a similar conveyance.⁵ Early in 1862 Molyneux called Lord Lyons' attention to the danger of British subjects being conscribed, whereupon the minister instructed him to use his utmost endeavors to prevent the enlistment of *bona fide* subjects, authorizing him to correspond with State and Confederate authorities for this purpose, but especially cautioning him not to mention the Legation in such nego-

¹ *Index to Exequaturs*, vol. i, Archives U. S. State Dep't. Malet, *Errand to the South*, 246-9.

² *Albion*, March 3.

³ *Cf. supra*, p. 60.

⁴ *Pickett Papers*.

⁵ *Savannah Republican*, Oct. 1, Nov. 1. 1861, *Charleston Courier*, Nov. 1.

tiations.¹ Molyneux had no occasion to use this authority, and we hear little of him except as a visitor to his summer home and to such Royal vessels as called at his port. He left the South a little before Bunch did,² again putting Fullarton in charge of the consulate.

In June, 1863, Fullarton acknowledged the receipt of Mr. Benjamin's circular forbidding direct communication with "functionaries residing in the enemy's country", whereupon the Secretary of State demanded documentary evidence of Mr. Fullarton's right to act, directing that he refrain from any official actions until such credentials should be approved. Like Walker, Fullarton profited by Moore's experience, and in July sent his vice-consular commission from Molyneux, and Lord Russell's authorization of the appointment. He remarked that it was a well-known custom for the vice-consul to assume charge in the consul's absence, as he had often done in the twelve years he had been connected with the Savannah office. Mr. Benjamin declared himself satisfied with the documents submitted.³

Next month Acting-consul Fullarton started his famous controversy with Governor Brown. July 14 Secretary Seddon telegraphed Gov. Brown that the loss of Vicksburg and Port Hudson necessitated strenuous measures for the protection of Georgia. Could not the governor induce the array of the whole arms-bearing population for the defense of Northern Georgia? The governor responded by issuing a proclamation calling on the people to defend their homes against invasion, accompanying it by an order from Adjt.-Gen. Wayne for a muster on August 4 in each county which did not voluntarily raise its quota before. This muster was

¹ *Sessional Papers*, 1864, lxii, 413.

² *Richmond Whig*, Dec. 12. 1862.

³ *Pickett Papers*.

to include all males, 18 to 45, regardless of their having supplied substitutes; the order further stated that "an unnaturalized foreigner living under the protection of our Government and laws . . . is bound to defend his domicile and is liable to be drafted by the State and compelled to do so."¹

This stimulated Mr. Fullarton to write the governor, July 22, that compliance with this dictum would make British subjects disobey the Queen's proclamation. He denied the right of Georgia to demand more than local police duty or defence against "local invasion by a foreign power". He had so instructed British subjects and warned them that conflict with Federal troops would render them liable to treatment as "rebels and traitors, and not as prisoners of war." Nearly all British subjects in Georgia had taken an oath not to bear arms on either side, so he hoped the governor would so modify his orders as to exempt them. He reminded his excellency that Mr. Molyneux had on a former occasion advised him that the consulate was in Fullarton's charge during the consul's absence, and told of Mr. Benjamin's recent approval.² The governor was absent when this letter arrived at the capital, so did not reply till August 8, when he wrote that he must conclude that Mr. Fullarton evidently misunderstood the purpose of the new levy: the sole objects were to maintain "internal order" and to "de-

¹ Seddon's telegram, Brown's proclamation and Wayne's order may be found in *O. R. A.*, 4, ii, 632-42, and Candler, *Confederate Records of Georgia*, ii, 464, iii, 368, 374. The correspondence between Brown and Fullarton is in the latter; also in the newspapers of the period, and in the pamphlet issued at Richmond (1863)—*Correspondence of the Department of State in Relation to British Consuls Resident in the Confederate States*.

² Candler, *op. cit.*, iii, 372. Startling originality in phraseology does not appear to have characterized Walker's and Fullarton's letters on this subject. They quoted their instructions too literally to fit the delicate situation.

fend to a limited extent against 'local invasion by a foreign power'", for which duty Mr. Fullarton had said the State had the right to claim the services of resident aliens. He said it was not proposed to take them from home, or to interrupt their usual vocations except in sudden emergency. The United States government was attempting to incite a servile insurrection,¹ which would mean robbery, arson, butchery of women and children, and worse, to which British residents would be as liable as any one else. As many who claimed to be British subjects were slave-holders they were as much interested in protecting their property and families as were native Georgians. Although Great Britain had constantly refused to recognize the Confederate States, Mr. Fullarton was permitted to continue his functions, therefore British subjects who chose to remain should not expect to do less than was now demanded: in no case would free egress from Georgia be refused, but if they remained, they knew what to expect. As, he continued, the United States government had been convinced by sad experience of its inability to defeat the Confederate armies, it had adopted the plan of destroying all provisions and agricultural instruments in the country occupied, and of driving from such territory all people loyal to the Confederacy, thereby putting a great strain on the resources of Georgia and other interior States, to which these refugees fled; so the British government could not fail to see that it was impossible to retain amongst the Confederates a non-producing class of consumers who refused to bear arms. Mr. Fullarton had said that at the time of domicil there was no law in existence requiring foreigners to take up arms against the United States, but, the governor reminded him, he must

¹ Candler, *op. cit.*, iii, 369 *et seq.* See a letter of A. S. Montgomery, of Washington, detailing such plan.

remember that at that time the "State of Georgia was by her own sovereign consent a component part of the United States", but since then had become a member of the Confederate States against which the remnant of the United States was "waging a cruel and unjust war". This change in political relations affected resident foreigners to the extent of making them liable to serve in the defense of their localities when assailed by United States troops, or else depart. The commercial reasons which, Mr. Fullarton said, induced them to settle in Georgia, ceased to exist when Her Majesty's government refused to recognize any longer the existence of legal commerce between British subjects and Georgia. The whole world knew that the blockade was ineffective, and that vessels entered and cleared almost daily, but if the British government chose to acquiesce in a paper blockade and adopted the pretensions of the United States government that Charleston and Savannah were still ports of the United States, then it must be admitted that the blockade of these ports by that government was a palpable violation of treaty stipulations, which gave the United States no right to blockade her own ports against English commerce.¹ Under these circumstances, the government maintained, Great Britain had no right to claim commercial privileges for its subjects in ports it recognized as blockaded, and if they did not depart they had no just cause of complaint for being compelled "to defend their domicils against servile insurrection or the attacks of a hostile power". The self-imposed oath could not free them from the obligations under which they were, by international law, in return for

¹ See Stark, *Abolition of Privateering, etc.*, 155, for an interesting discussion of the English, French and Confederate position that the mere act of blockade was a recognition by the U. S. of the Confederacy as a belligerent. Mr. Stark maintains this thesis. For another view see Blaine, *Twenty Years in Congress*, i, ch. 26.

the State's protection, so the governor declined to modify his orders.¹

This inspired Mr. Fullarton to fresh efforts. He had perfectly understood, he declared, the purpose of the levy, but the governor had misunderstood him when he "admitted the right of a State to claim the services of British subjects resident within its limits for the purpose of maintaining internal order, and even to a limited extent, to defend the places of their residence against local invasion by a foreign power. The present, he flatly asserted, was not a foreign but a civil war."² Then followed the passage from the Foreign Office circular about the "plainest notions of reason and justice". Whilst acknowledging the right of the State, under existing circumstances, to the services of the Queen's subjects for patrol or police duty, Her Majesty's government objected to any further extension of their service. Consequently he felt himself compelled, under his instructions, "to advise those drafted to acquiesce in the duty until they are required to leave their immediate homes or to meet United States forces in actual conflict; in that event, to throw down their arms and refuse to render a service, the performance of which would run directly in the teeth of Her Majesty's proclamation and render them liable to the severe penalties denounced against a violation of the strict neutrality so strongly insisted on in that document, trusting to my interference in their behalf with the government at Richmond under whose command they will be. In other States British subjects imprisoned for following this advice have already been discharged from custody and service by order of the War Department." He saw no reason, he

¹ Candler, *op. cit.*, iii, 383-9.

² However, "the laws of war are the same in civil as in foreign war." McKenzie, *Roman Law*, 62.

said, why political changes should alter the obligations of aliens, who being foreigners, had no voice in the councils which brought about these changes. The protection afforded by the State was little more than safety of life, as the law of Georgia forbade aliens to hold certain kinds of property: he was not concerned with those who held such, in violation of the law, but protested "against the compulsory service in a civil war" of those who had not infringed it. Then he remarked that he was glad to learn that no obstacle would be put in the way of those who chose to depart rather than disobey the Queen, but still this did not observe "very scrupulously the comity usually observed between foreign States". Further, in consequence of the governor's proclamation, he knew of many that were preparing to leave, quite a number of whom were mechanics "of whose inestimable services at this crisis" the Confederacy would be deprived. Was he to understand that any already drafted might avail themselves of the alternative of departing?

Next he said: "The dispatches I have received from the British Government relative to compulsory service are strong. I am instructed to remonstrate in the strongest terms against all attempts to force British subjects to take up arms. Should these remonstrances fail 'the Governments in Europe interested in this question will unite in making such representations as will secure to aliens the desired exemption'". Hitherto, he added, he could report that British subjects had not been so constrained and regretted that Governor Brown's action precluded this for the future, particularly as such action was in contrast with the conduct of the United States and with that of other Southern States.¹

¹ Candler, *op. cit.*, iii, 391-4. *Sess. Papers, loc. cit.*, 414. *Corr. Dept. State*, 41 *et seq.*

Naturally this aroused the ire of Gov. Brown, who replied, August 26, in substance as follows: Mr. Fullarton admitted liability for defense against a foreign power, but sought to evade the logical conclusion of this by denying that the United States was a foreign power, which error was probably induced by permitting Her Majesty's consuls to act under their former *exequaturs*. As it was not a part of the governor's purpose to convince Mr. Fullarton that the United States was a hostile power foreign to Georgia, he would merely remark that if the latter's pretensions were correct, he should have applied to President Lincoln, not to Gov. Brown. He understood that Mr. Fullarton advised British subjects if drafted to acquiesce, until their homes were attacked by United States forces, then to throw down their arms. In this contention he could neither be bound by the consul's claim that the United States was not a foreign power nor admit the right of the Queen to change the laws of nations by proclamation and insist upon maintaining her subjects in Georgia and exempting them from duties consonant with such laws. If the troops then being organized should be turned over to the Confederate States government and British subjects threw down their arms, that government could pardon them or strike their names from the rolls, if it chose, but if they exhibited "such dishonorable delinquency" while under his authority, they must expect to be dealt with as citizens of Georgia would be in like circumstances. Also he declined to admit the force of Mr. Fullarton's argument about aliens having "no voice in the councils" and insisted that they were obligated to conform to the new order of things or depart. As to the laws about property, the courts were open to redress any wrongs in that respect; but for that matter, the laws of Great Britain, in regard to aliens holding property were no more liberal, if so much so. He knew of no law of nations putting any

obstructions in the way of aliens desiring to depart at this juncture, and, in regard to mechanics, no doubt they had remained because it was to their interest to do so, and Georgia would cheerfully adopt the rule which generally controlled the British government—she would consult her own interests and exempt from military service such alien mechanics as chose to remain and would be more serviceable in that capacity. Aliens already drafted might leave the State *permanently*, not merely temporarily to evade military service. The governor presumed that all the British government intended to claim was that aliens should not be detained against their will and compelled to serve, which he readily granted; it scarcely intended to insist that its subjects had a right to remain and be exempt from any service the State had a right to demand. He said Mr. Fullarton had contrasted the conduct of Georgia with that of the United States: but as the latter was the invading party and could seldom need the service of aliens to protect their domicils, the cases were not parallel. He noted that in one part of his letter Mr. Fullarton said Gov. Brown's decision was opposed to that of other governors who had discharged British subjects forcibly detained, in another part he said subjects who had been imprisoned for throwing down their arms in accordance with this advice had been discharged by the War Department: the governor was unable to understand "why it became necessary for the War Department to interfere and discharge British subjects imprisoned in other States for throwing down their arms and refusing to fight, if the governors of those States, upon representation, in all cases ordered the discharge of British subjects forcibly detained in service." He trusted his position was so clear as to obviate the continuance of this discussion.¹

¹ Candler, *op. cit.*, iii, 403-9.

Mr. Fullarton wrote, September 12, that relying upon the governor's statement, he requested that two British subjects drafted at Rome be granted permission to leave the State, with thirty days to arrange their affairs. The governor said this would be cheerfully granted upon the production of proof that they were British subjects. He called the consul's attention to an ordinance of the Convention (March 16, 1861), which provided that all white persons resident in Georgia at the time of her secession with the *bona fide* intention of making it their permanent abode should be considered as citizens of Georgia, regardless of their nativity, unless within three months of the passage of the ordinance foreign-born persons made oath to the contrary. If the men in question were residents of Georgia, January 19, 1861, and did not make such oath within the required time, they would be considered to have accepted the privileges and responsibilities of citizens; if they entered the State after January 19, the ordinance did not apply.¹

Being in the midst of a campaign for re-election, Governor Brown gave this correspondence to the press, whose various attitudes are fairly represented by the *Charleston Mercury*,² which approved the governor's course and hoped all other Southern governors would emulate him, and the *New York Herald*,³ which approved Fullarton and wished his government would follow his example. The Richmond and Atlanta papers were inclined to assail Mr. Benjamin for permitting the consuls to remain. The *London Index*⁴ thought Fullarton exceeded his province in discussing the character of the war, and said only his anomalous position (for which it blamed Lord Russell) excused his insult to the Confederacy.

¹ *Corr. Dept. State, etc., loc. cit.*

² Oct. 13.

³ Oct. 12.

⁴ Oct. 29.

September 30 Mr. Fullarton wrote to Secretary Seddon in behalf of some French and Germans in Savannah, whose timber was being impressed by the military authorities. This was referred to Mr. Benjamin whose opinion was that, since public safety took precedence of all other considerations, the property of neutrals was as much liable to impressment as that of citizens of the Confederacy.¹

With his annual message Governor Brown sent the Legislature the correspondence with the consul and remarked "that so long as the British Government recognizes no legal commerce with the Confederate States, and denies the existence of such a power, we are certainly under no obligation to extend to the subjects of that Government privileges or exemptions not provided by the laws of Nations".² When certain Englishmen residing at La Grange and Columbus were conscribed, Fullarton, having seen the futility of appealing to Governor Brown, appealed to Mr. Benjamin with disastrous consequences to himself.³

¹ *Pickett Papers. O. R. A.*, 4, ii, 835.

² Candler, *op. cit.*, ii, 518.

³ See Chapter XII.

CHAPTER VIII

THE CONSULATE OF MOBILE

THE district of the consul at Mobile embraced Florida, Alabama and adjacent parts of Mississippi. He had vice-consuls at Pensacola and Key West, but as Key West remained under Federal control, neither Welch nor Butterfield (who were successively vice-consuls there) had any relations with the Richmond or Tallahassee authorities, though both had some communication with the Union officials: for example, Butterfield was accused of protecting the crew of a blockade-runner, but his own government upheld him.¹ Mr. Heap, vice-consul at Pensacola, is mentioned only twice,² and had no correspondence with the Confederate authorities, probably because Pensacola was blockaded in May, 1861, and evacuated a year later by the Confederates. Mr. Heap seems to have served later in Turkey.

In 1858 Charles Tulin was appointed consul at Mobile.³ His tastes and temperament made the local atmosphere uncongenial, and he desired to return to Oran, where he had been before. He went to England in 1860 to arrange this, but he was still accredited to Mobile for several years.⁴ Attached to the office was a young Alabamian, Charles Labuzan, Jr., who so favorably impressed Mr. Tulin, that the

¹ *Diplomatic Correspondence*, 1864-5, i, 309, 399; ii, 202.

² *Pickett Papers*, Sept., 1862; *N. Y. Tribune*, May 29, 1861.

³ *Index to Exequaturs*, vol. i.

⁴ *Almanach de Gotha*, 1861-4.

latter put him in charge of the consulate and recommended his appointment as acting-consul, to which position he was appointed, though still a minor. As strenuous times were evidently approaching, some of the English residents of Mobile represented to the Foreign Office that it was desirable to have the consulate in charge of an Englishman and an older man, so in the spring of 1861, Mr. Labuzan was superseded by James Magee, a man of considerable consular experience, and several years Mr. Labuzan's senior. There were no complaints against Mr. Labuzan.

Shortly before Magee's arrival, the New Orleans *Delta*¹ announced that it was reported in Washington that the British consul at Mobile had been maltreated by a mob. Mr. Labuzan promptly denied the report and suggested that the correspondent of some Northern journal was trying to arouse British feeling against the South. This was just about the time of the tarring and feathering of the captain of the *Kalos* at Savannah, and the correspondent probably confused the two.

When he left the consulate, Mr. Labuzan enlisted in the Mobile Rifle Company. He served with credit and distinction, attaining his captaincy after Chickasaw Bayou. He was a relative of General C. A. Labuzan of the Confederate army.²

Acting-consul Magee's first correspondence with the Confederate authorities seems to have occurred in June, 1862, when he telegraphed General Lee requesting the release of George Saville, a British subject imprisoned by the general's orders. The State Department replied to this telegram and informed him that Saville was arrested as a spy, with abun-

¹February 13, 14, 16.

²*O. R. A.*, 4, i, 752. For most of the facts in this and the preceding paragraphs I am indebted to the kindness of Captain Labuzan, who is now living in Mobile.

dant evidence against him; he could not be paroled, nor could he be tried until the enemy was driven from the vicinity.¹ This was just about the time of the Seven Days' Fight and shortly thereafter Saville was released. In September Magee entered a claim for an indemnity for false imprisonment. Mr. Benjamin acknowledged the application, but said it was impossible at that time to investigate, as General Lee was then in the field. The following February Saville tried to hasten matters, but received the same answer.² As the general remained in the field for the rest of the war, it is probable that Mr. Saville never received his indemnity.

August 4, 1862, Magee asked the War Department if British subjects who had never taken the oath of allegiance to either the United States or the Confederacy were liable to conscription.³ On the 8th, he telegraphed the State Department, requesting that orders be issued to prevent the compulsory enlistment of foreigners. Mr. Benjamin referred this to Randolph who telegraphed Major Swanson, enrolling officer at Tuskegee, that only domiciled foreigners, *i. e.*, those settled permanently in the Confederacy with the intention of remaining, might be conscribed. The oath of the party supported by that of one credible witness would be sufficient.⁴ This very day Magee got impatient and wrote Randolph, saying he had received no reply to his request for the prevention of further enlistments of British subjects in Alabama and Florida, and for the discharge of those already conscribed. His colleagues at Richmond and Charleston informed him that no British subjects were allowed to be conscribed in those consulates, and he thought it peculiar that the Confederacy should have one law for Vir-

¹ *O. R. N.*, xviii, 855.

² *Pickett Papers*.

³ *O. R. A.*, 4, ii, 67.

⁴ *Pickett Papers*.

ginia and the Carolinas and another for the States of his consulate.¹ On the 26th the Secretary of War sent him a copy of the order to Swanson, and three weeks later wrote him that foreigners were not liable, unless they were permanent residents, and on the consuls' requests had been invariably discharged if the enrolling officers had made mistakes regarding domicil.²

In February, 1863, Magee asked if the governor of Mississippi had the right to compel aliens to serve in the army. Several subjects of the Queen, he said, holding his certificate of nationality had been enrolled and Governor Pettus refused to honor such papers.³ In March he appealed directly to the President, asking if it were by his sanction that insult was added to injury "upon a race who certainly do not deserve this and who are only guilty of claiming the rights which the laws of all nations allow."⁴ He would not trouble the President but for the fact that General Pemberton ignored his letters and Governor Pettus gave no satisfaction. Accompanying this letter was the document which had aroused his ire. It was a certificate from the commandant of the camp of instruction at Brookhaven, Miss., stating that the bearer, a conscript from Adams County, swore that he was an undomiciled foreigner with no intention of becoming a citizen; therefore he was discharged in accordance with the Act of Congress [*sic*], but it was "urged upon all persons connected with the Government by contract or otherwise, and all others, not to give employment in any way to this class of exempts, they having become a nuisance to the Confederacy."⁵

Before this could be adjusted, all of Mr. Magee's attention was demanded by his own affairs. November 11, 1862,

¹ *O. R. A.*, *loc. cit.*

² *O. R. A.*, 4, ii, 84.

³ *Pickett Papers.*

⁴ *Ibid.*

⁵ *Ibid.*

President Walsh of the Bank of Mobile told Magee that the State of Alabama was "very anxious to insure its creditors their dues, notwithstanding the obstacles put in its way by the United States Government." So he requested Mr. Magee to ascertain "from the British minister at Washington (or through any other channel)", if the bank might place in the consul's hands for transmission to London, sufficient specie to pay the interest on bonds held by British subjects. Magee replied in the 14th that he had asked the consul at New Orleans if H. B. M. S. *Rinaldo* could not come to Mobile to get the specie, then deliver it to the consul-general at Havana for transmission to London. He added, "If I fail here, I will invoke the aid of Lord Lyons."¹ Mr. Walsh then delivered to Magee thirty-one kegs containing \$155,000. January 3, 1863, the British ship *Vesuvius* arrived off Mobile and Captain Croker told Commander Hitchcock of the U. S. S. *Susquehanna*, that he wished to communicate with the consul, who, he understood, had some money to send by him. Hitchcock replied: "We cannot examine an English man-of-war; we trust all you do will be right and proper. You could go up to the city, if you wished, where we don't go." When Lord Lyons heard of the contemplated step he immediately ordered Magee to desist, but Magee claimed that the order did not arrive till a few hours after the departure of the *Vesuvius*. Lord Lyons dismissed Magee, apologized to Seward and instructed Admiral Milne to prevent a repetition of the offense. That official issued a circular to the commanders of Royal vessels in American waters saying that communication of such vessels with consuls in blockaded ports was by permission of the United States government; therefore

¹ The correspondence of Magee with the bank and the naval officers, of Lyons and Seward, Adams and Russell, etc., is in *Sess. Papers, loc. cit.*, 44⁸ et seq. *Dip. Cor.*, 1863, i. 119-155. *O. R. N.*, xix, *passim*.

nothing but official dispatches might be received, without the written permission of Lord Lyons or himself, which naval officers were forbidden to solicit. In the Commons, May 19, 1863, Mr. Warner asked if it were true that the vice-consul at Mobile had been removed; if so, why? Under-Secretary Layard replied, telling of Secretary Seward's permission for men-of-war to communicate with the consuls; Magee, he said, was not vice-consul but acting-consul in the absence of the consul. When he communicated his purpose to the acting-consul at New Orleans he did not inform Lord Lyons, and alleged that the latter's telegram did not arrive in time, yet for twelve days during which he sent dispatches to the Legation he made no mention of the visit of the *Vesuvius*. No demand had been made by the United States government, but Her Majesty's government felt that this conduct was unbecoming a neutral, so Magee was dismissed. Sir James Ferguson wanted to know if this money was not owed British subjects by the State of Alabama, and if other consular agents had not done likewise without censure. Mr. Layard knew nothing about either point.¹

The citizens of Mobile, through the mayor and the Confederate naval and military commanders tendered Magee a banquet, as a token of good-will and esteem, but he declined on account of the short time he had to prepare for his departure.²

Governor Shorter of Alabama wrote Mr. Benjamin that he believed Magee was dismissed for transmitting this coin, so he protested against the reception of a successor unless Great Britain recognized Confederate independence. He enclosed a newspaper clipping voicing the same idea and

¹ Hansard's *Debates*, clxx, 1952 *et seq.*

² *London Index*, June 25, 1863.

dilating on Magee's ability, popularity, *etc.*, and announcing the dinner offered him. Mr Benjamin replied that as England placed a consul in a port for her own convenience, she might withdraw him at pleasure, and decline to assign a reason, if one were asked: the case would be different if she voluntarily disclosed as her reason an unfriendly feeling towards the Confederate States or a desire to favor the enemy, but he could not base a demand upon a newspaper clipping. It seemed incredible to him that Great Britain should punish an officer for remitting money due its subjects, when done with the consent and approval of the Federal commander, therefore he wished the governor to collect further evidence. He had not permitted and would not permit the assumption of consular functions except upon the submission of proper credentials to him: those consuls in the Confederacy at the date of its formation had been permitted to remain, though the Confederacy had the undoubted right to dismiss them if it chose, but the President thought it more expedient to let them remain. Whenever a new consul appeared he would have to submit his commission to the Confederate government; if anyone assumed to act in Alabama without his permission, he requested his excellency to notify him at once.¹ In May, Colonel R. H. Smith, of Mobile, suggested that Magee be appointed Confederate consul to some foreign port. Mr. Benjamin said he would keep the letter for reference when "we decide to appoint consular agents abroad. As Mr. Magee is not a citizen of the Confederacy, there would be great difficulty in the way of his appointment."² Later in the same month Governor Shorter wrote that he had sent his aide, Colonel Hamilton, to Mobile to investigate. Al-

¹ Both letters in the *Pickett Papers*: Shorter's, March 28, Benjamin's, April 4, 1863.

² *Pickett Papers*.

though, continued the governor, Magee was undoubtedly removed because of the transmission of the specie, the evidence was confidential, so Mr. Benjamin could not complain, but if Lord Lyons attempted to fill the vacancy, of course the Secretary would not let the appointee act. The governor enclosed Colonel Hamilton's report, which showed that Magee had let the aide see the correspondence only on condition that it should not be copied. Lord Lyons took the position that Magee's action was a breach of blockade.¹

In the Richmond *Whig* for May 18, 1863, appeared an editorial announcement that Cridland was leaving for Mobile with a commission as "full consul"; this would please his many friends in Richmond, were not his credentials (of recent date) addressed to Mr. Lincoln.

This intelligence . . . will not give pleasure to anyone in the South. To be sure, we know that we have no national existence outside of our own fond imaginations, and that in the eyes of Great Britain we are still part and parcel of the United States. . . . We know, further, that sundry private citizens of the South, nicknamed Ministers, are cooling their heels to no earthly purpose in the ante-chambers of St. James and the Tuileries; this useless refrigeration of the *ossa calcis* of Messrs. Mason and Slidell has been going on for over a year. Nor are we ignorant that some remote intimations of these things have reached the "so-called Confederate Government" without exciting the least stir or movement on the part of the "so-called."

It continued in the same strain to ridicule the appointment of a "Lincoln consul at Mobile". Seeing this editorial Cridland went at once to Mr. Benjamin and assured him that the statement was erroneous; he was going to Mobile as a private individual to look (unofficially) after

¹ *Pickett Papers*. Dated Mobile, May 29.

certain interests of the British government; as he was going in this unofficial manner he had not considered that he was doing anything improper in not informing Mr. Benjamin. The latter replied that neutrals were at liberty to travel within the Confederacy and transact business without other restrictions than those imposed by the military authorities, and he saw no objection to Cridland's "going to Mobile to transact business unofficially".¹ Cridland volunteered to have the papers correct the error, and next day, under the caption "MR. CRIDLAND," the *Whig* said: "We desire to correct the report mentioned by us yesterday in connection with this gentleman, so far as to state that he goes to Mobile without commission from the Queen or *exequatur* from Washington, but simply at the request of Lord Lyons to look after British interests in that quarter in an unofficial way. Of this we are assured by Mr. Cridland himself, who leaves the city this morning."

About ten days later Secretary Benjamin received a letter from E. S. Dargan, of Mobile, protesting against Cridland's coming there as consul, of which he had heard rumors. Mr. Benjamin assured him that Cridland had no official capacity whatever, and the administration could not prevent Cridland's going unless all British *subjects* were to be expelled from the Confederacy. The letter continued: "We permit no new officers of foreign governments to come here unless accredited to us. I have just refused permission to the French consular agent at Charleston."² We hope that the difficulties foreign governments find in transacting business in the Confederacy will embarrass them so much as to force action on their part, but we must keep ourselves

¹ *Pickett Papers; Sess. Papers, loc. cit.*, 405 et seq.

² This was Arthur Lanen, sent by the consul-general at New York. See Chapter XII.

strictly within the rules." He felt sure that Cridland's sympathies were with the South, but had no right to inquire into his opinions, as he was a private individual and not an official.¹

Imagine Mr. Benjamin's surprise on receiving from Secretary Mallory the following telegram sent by Admiral Buchanan, from Mobile, June 4: "The French consul, M. Portz, has, in his official capacity as acting-English consul, introduced me to Mr. Cridland, who has shown to me an official document, signed by Lyons appointing him the acting English consul at Mobile. Am I to recognize him as such?"² On the 8th he sent a copy of the "document", which was an official letter from Lord Lyons to Portz saying that Her Majesty's Government had directed Cridland "to take charge of Her Majesty's consulate at Mobile with the character of acting consul." He thanked Portz for looking after the consulate since Magee's departure, and requested him to transfer the office to Cridland, "to present Mr. Cridland to the local authorities and to assist him in entering upon the functions as Her Majesty's Acting Consul at Mobile."³ This letter was entrusted to Cridland and had been written upon the receipt of one from Lord Russell, of February 17, suggesting that if there were any difficulty in finding a successor for Magee, Cridland be sent. Lord Lyons was to decide whether Cridland should make occasional visits to Mobile or reside there; in the latter case he was to receive the same allowance Magee had. The minister thereupon wrote Moore to notify Cridland to take charge temporarily at Mobile, and cautioned Moore not to mention the Legation in his letter to Cridland, but to let it appear that he was acting under instructions from the For-

¹ *Pickett Papers; Sess. Papers, loc. cit.*, 447.

² *Pickett Papers.*

³ *Ibid. O. R. N.*, xx, 830.

eign Office.¹ Because of this "diplomatic fiction" Lord Lyons and Cridland maintained that the latter had no "commission" and was not appointed by the British minister, which dialectic subtlety failed to convince the astute gentleman who held the Confederate portfolio of State.

That obdurate personage, as soon as he received Buchanan's telegram, wrote Cridland, June 8, that he could not be permitted to perform the functions of consul under the appointment from Lord Lyons. "As you informed this Department that you were going to Mobile to look after British interests unofficially, and failed to communicate the fact that you were the bearer of an appointment from Lord Lyons, it is deemed best, to avoid any misunderstanding on the subject by requesting you to select some other residence within the Confederacy than the State of Alabama."² He sent this to Major-General D. H. Maury, commanding at Mobile, with the direction to deliver it to Cridland and see that it was obeyed. On the 2d, General Maury had ordered the provost-marshal to recognize Cridland as British acting-consul, but on the 7th, under orders from the War Department, he revoked this and directed Cridland to "suspend the exercise of all consular functions".³ June 9 Assistant-Secretary of State Washington informed Governor Shorter that action had been taken in accordance with his letter of the 29th, to prevent any appointee of Lord Lyons succeeding Magee.

Cridland had complied with Maury's instructions, and reported to Lord Lyons that he had acted as consul for a week, and his actions had been respected; he would continue to appear at the office and inform British subjects that his functions were suspended. On the receipt of Mr. Benjamin's

¹ *Sessional Papers, loc. cit.*, 417 *et seq.*

² *Pickett Papers. Sess. Papers, loc. cit.*, 390.

³ *Ibid.* 389.

letter he replied that he had only denied the statement in the Richmond papers that he had "a full consul's commission and an *exequatur* from the United States Government;" that he had told the Secretary that he was going to Mobile to do what Magee had previously done as acting-consul, and that he had a letter from Lord Lyons to Portz asking the latter to deliver the archives to him. As this letter was not addressed to him, he did not consider it a commission. He would comply with the request to leave Alabama.¹ Under the same date, he sent a private note asking if he might stay in Mobile till he heard from Lord Lyons what he was to do with the archives, which covered forty years.² Benjamin replied in the negative, saying that it was desirable that the local authorities should not be misled by his presence there, so he was requested to leave with the least possible delay.³ Cridland had already written Lord Russell, asking for instructions and informing him that in the interview of May 18, Benjamin had said that he knew that as acting-consul Cridland needed no commission, hence no *exequatur*. "All of which," said Cridland, "he seems to have since forgotten and desires to convey the idea that he was not aware of my appointment as acting-consul. I felt that I had no authority to show Mr. Benjamin Lord Lyons' letter addressed to M. Portz."⁴ When he received Benjamin's refusal, he reported it to Lord Lyons, saying that he was packing up the official papers, which he would leave in the custody of the Dutch consul.⁵ On the same day he wrote Mr. Benjamin another private note telling him that he did not know how to dispose of the consular library, letter-books, *etc.*; that he had only recently heard of the circular forbidding communication with British officials in the United States, so

¹ *Sess. Papers, loc. cit.*, 380 *et seq.*

² *Pickett Papers.*

³ *Ibid.*

⁴ *Sess. Papers, loc. cit.*, 389.

⁵ *Ibid.* 392.

had written to London for instructions, that Walker informed him that he was expecting a Royal vessel to arrive soon from Halifax, and he hoped to receive orders thereby. Referring to Mr. Benjamin's last letter, he said he saw no danger of misconception if he remained for two months or so, until he received instructions, as the local papers had announced the closing of the office, and he had moved the archives to a private room; his friends had learned from the military authorities that he was ordered to leave, and he informed all comers that there was no one in the city or state to transact official business.¹ Mr. Benjamin said that in view of these circumstances, Cridland would not be disturbed until the British government had had time to dispose of the matter, which ought not to take more than a month or so.² September 8, Lord Russell sent orders for Cridland to request permission to remain at Mobile; if this were refused he was to return to Richmond and await instructions.³

Lord Lyons, when he reported Consul Moore's dismissal from Richmond⁴ to the Foreign Office, had said that while he had heard of no objections being made to Fullarton, he doubted very much if Walker and Cridland would be recognized as acting-consuls. He was not surprised, then, to learn of Cridland's fate.⁵

Mr. Benjamin had learned of Cridland's "commission" just two days after he revoked Moore's *exequatur*. He wrote Mason, June 11, that he had just received information "illustrating most forcibly the necessity" for the order forbidding communications between foreign agents in the Confederacy and those in the United States, of which order he had informed Mason in the letter of June 6, announcing

¹ *Pickett Papers*.

² *Ibid.*

³ *Sess. Papers, loc. cit.*, 390.

⁴ *Cf. page 86 supra.*

⁵ *Ibid.* 384.

Moore's dismissal. The dispatch of June 11 recounted the circumstances of Magee's recall and Cridland's appointment. The Secretary thought President Davis's conclusions about the matter should be presented to the British government, in order that they might re-examine the case with a view to adjusting the "anomalous relations" then existing. "By the principles of the modern public code," he said, "debts due by a state are not subject to the operations of the laws of war, and are considered so sacred as to be beyond the reach of confiscation." He pointed out that during the Crimean War, England had paid such a debt to Russia, and said that the Confederate States had likewise refrained from sequestrating the dividends of public debts to their enemies: not until the United States passed a confiscation law did the Confederate government consent to the temporary sequestration of the enemy's property, and only then to indemnify the sufferers under the United States confiscation law. "What possible lawful interest," he asked, "could the United States have in preventing the remittance of specie due to the creditors of the State of Alabama?"

The rest of the dispatch may be summarized as follows:

Blockades are for enforcing an enemy's submission by the destruction of his commerce, the exhaustion of his resources and the consequent abandonment of the struggle. The remittance of specie, in Magee's case, furthered rather than retarded these objects: therefore the United States could wish it to remain in the Confederacy only in the hope of capturing it or to dishonor Alabama by making her appear regardless of public faith. On the other hand the British Government could regard Alabama only as a part of the United States in rebellion or as an independent state waging a lawful war: if the former, then the United States was bound to aid neutral nations in the collection of just claims; though it could not compel payment, it should interpose no obstacle thereto; ac-

cordingly, the consul's action should have been approved at both Washington and London. If the latter hypothesis were the correct one, as he maintained it to be, then the action of Lord Lyons "savoured on this occasion rather of unfriendly co-operation with an enemy than of just observance of neutral obligations"; for he not only assumed the exercise of authority within the Confederacy without permission from Richmond, but ignored that government and assumed that the States composing the Confederacy were "an appendage" of the United States. Her Majesty's government must see that it was not consonant with the rights of the Confederacy or with neutral relations that a minister should be stationed at Washington with the duty of "entertaining amicable relations" with the United States, "and the power of controlling the conduct of British officials" in the Confederacy. The application would be the same if Great Britain declined to determine the status of Alabama, and regarded her merely as a belligerent, because the belligerent which had a minister accredited to it had additional power to inflict injury on its opponent. Therefore he re-iterated the instructions about communications between the consuls and the Legation.¹

Mason received this dispatch July 21 and transmitted it to the Foreign Office on the 24th; the letter of June 6, he did not receive until later, but newspaper clippings containing it had already been received by Lord Russell. He wrote Mason, August 19, that to the British government, Magee's action appeared to aid one belligerent against the other, but his conduct was a question of which Her Majesty was the sole judge, though he admitted that "the so-styled Confederate States are not bound in any way to recognize an authority derived from Lord Lyons." But, he said, it was very desirable that England should have persons authorized

¹ *Pickett Papers*. Richardson, *Messages and Papers of the Confederacy*, ii, 499.

to represent in the Confederacy the interests of British subjects. "This," he concluded, "has been done in other similar cases of States not recognized by Her Majesty, and it would be in conformity with the amity professed by the so-styled Confederate States towards Her Majesty" if such an arrangement could be made.¹ Mason replied that Mr. Benjamin's letters showed no disinclination to permit British consuls to reside in the Confederacy, but a request for the reception of such agents as Lord Russell had in mind must be addressed to Mr. Benjamin, and if Lord Russell would make the proposition in a form consonant with the expressed views of the Confederate Secretary, the commissioner would be glad to transmit it.² There the matter of unofficial consular agents rested.

When Lord Lyons saw a copy of Mr. Benjamin's letter of June 11, he wrote Lord Russell to the following effect:

He did not consider Mr. Benjamin's objection to the consuls' being under his orders at all unreasonable.³ Cridland had been appointed acting-consul in conformity with Lord Russell's orders: "he never held any commission or letter of appointment from me." Moore had been told to issue such a letter, and as Portz had been requested by Lyons to take charge of the consulate when Magee left it was necessary to request him to transfer it to Cridland; this request was seen by the authorities at Mobile and "it appears to have been represented to Mr. Benjamin as a letter of appointment from me to Mr. Cridland. But however this may be, it does not seem to me to be unnatural or unreasonable that the Confederate authori-

¹ *Sessional Papers, loc. cit.*, 453.

² *Ibid.* 454.

³ Aug. 29, under Lord Lyons' orders, an attache of the Legation forwarded Cridland's correspondence and requested that all further instructions for the consuls in the South be sent direct from London. He emphasized the instructions to Moore that Cridland's appointment should be made out as emanating from the Foreign Office, not from the Legation. *Sess. Papers, loc. cit.*, 390.

ties should view with displeasure even the merely formal intervention of this Legation in the appointment of consular officers in the Confederate territory . . . Mr. Magee was dismissed for assisting persons in the Confederate States to export specie from a blockaded port . . . a flagrant violation of the Queen's proclamation. It is not surprising that my endeavors to prevent Mr. Magee's committing this breach of blockade should have increased the displeasure with which the Confederates viewed the connection between this Legation and the Southern consulates. Mr. Benjamin's dissertation on the duty of paying debts may, indeed, be passed over as entirely beside the question." He was as anxious as anyone that British subjects should receive their dues, but "to export specie from Mobile was a manifest breach of the blockade of that port, and to send it through the blockading squadron in a British man-of-war was a direct violation of the understanding with the United States Government, in virtue of which Her Majesty's ships communicated with the blockaded ports." Therefore as long as the consuls were under his orders, it was his duty to prevent such things; but "it so happened that the Confederate authorities were at that time particularly anxious to find the means of exporting specie in order to pay for munitions of war procured in Europe," therefore they were naturally irritated at losing the prospect of using the consuls for the purpose.¹

The feeling of the Southern papers was reflected by the London *Index*, which quoted the Mobile papers to the effect that Magee had been marked for official decapitation for the same reason that caused Bunch's removal—"warm Southern sympathies".²

Cridland seems to have remained unobtrusively in Mobile, as we hear nothing more of him during 1863. January 4,

¹ *Sess. Papers, loc. cit.*, 416.

² May 21, 1863. Also see Richmond *Enquirer*, May 20, and Savannah *Republican*, April 6.

1864, Commander Johnstone of H. B. M. S. *Virago* requested from Commodore Thatcher of the blockading squadron instructions for delivering to the consul in person despatches from the Foreign Office. The instructions were given, but next day the commodore wrote that he had just recollected seeing in the papers that the "Confederate executive" had deprived the consuls of their functions, and a gentleman from Mobile (a prisoner) told him Cridland disclaimed being anything but a private citizen; so he asked the British officer for information. Johnstone replied that his despatches were marked October 17, and directed to "Frederick J. Cridland, H. B. M. Acting Consul" at Mobile, so he presumed the latter was still acting, if not, he would retain the despatches. Whereupon the necessary arrangements were made for him to telegraph Cridland to come down to Fort Morgan. This correspondence was forwarded to the Navy Department at Washington. On Thatcher's letter was endorsed "Calls them 'Confederates' and recognizes the act of Jeff Davis in suspending the Consuls.—F[ox]." This caused Secretary Welles to admonish Admiral Farragut as follows:

It is observed that Commodore Thatcher, in his letter to Commander Johnstone uses such expressions as "the Confederate States," the "Confederate executive," and "Confederate Government." We do not admit the legitimacy of the so-called Confederate Government, and the use of these assumed titles should not take place with foreign officials. Such terms as "the rebel" or "the insurgent" Government would be better. In these remarks, it is not intended to intimate that in the necessary intercourse with the rebels themselves there should be any want of personal courtesy or any refusal to recognize their claims to titles in necessary official intercourse.¹

¹ The whole correspondence is in *O. R. N.*, xxi, 5-11.

Cridland seems either to have lied to Johnstone or induced him to break his word to Thatcher, for on February 6 Cridland sent Benjamin a copy of a Foreign Office dispatch of September 30 relative to the liability of British subjects to conscription, and a request, in obedience to Lord Russell's instructions, that he be permitted to remain. The Secretary replied: "You did not send any credentials of authority to communicate with this Government on behalf of Her Britannic Majesty's Government, therefore I return unread your enclosure that you may comply with that indispensable prerequisite." No objection, Mr. Benjamin said, would be made to Cridland's continued residence as a private individual, but no official or public acts could be allowed without the previous consent of the Confederate government.¹ In response Cridland sent a copy of a letter from Lord Russell as follows:

FOREIGN OFFICE, SEPTEMBER 29, 1863.

F. J. CRIDLAND, ESQ.

In case Mr. Benjamin should ask in what capacity you propose to correspond with him, you may inform him that you are a consular agent appointed by Her Majesty's Secretary of State for Foreign Affairs to communicate with the *de facto* Government of Richmond respecting matters in the Confederate States in which British interests are concerned. You will take care to be very prudent and discreet in all your communications and you will refrain from assuming any official rank or title.²

Cridland's prudence and discretion may be fairly gauged from his copying that last sentence. He thanked Benjamin for permission to remain and said he would comply with the conditions. February 29, Mr. Benjamin wrote: "Yours of the 20th received assuring me that you will observe my terms as to private residence. The announcement is satis-

¹ *Pickett Papers*.

² *Ibid*.

factory.”¹ The same day he sent another dispatch as follows:

Yours of the 20th received, in which you enclose as your “credentials attesting your authority to communicate with this Government in behalf of that of Her Britannic Majesty” a paper written *by* you which you say is a copy of a paper written *to* you. You can scarcely have believed that this paper would be received as accrediting you to act in behalf of the Government of Great Britain, and your sending it is hardly to be reconciled with due respect to this Government.

You will perceive the propriety of my request that you refrain from further correspondence with this Government on the business of Her Majesty’s Foreign Office until you are clothed with an official character and recognized in such character by this Government.

The paper enclosed in your former letter is again returned to you.²

Cridland replied that he would communicate the Secretary’s dispatches to the Foreign Office and meanwhile would “strictly attend to the impositions therein contained.”³ What orders he received from the Foreign Office, we do not know. He certainly did not obey that of September 8 to proceed to Richmond, probably considering it wiser to avail himself of Mr. Benjamin’s permission to remain in Mobile as a private individual, which he did until Mobile fell into Federal hands.

How is this whole episode to be judged? As to Magee, even some of the Southern papers admitted that his action was a breach of blockade,⁴ and Lord Russell’s statement that his conduct was a question for Great Britain alone, had been anticipated by Benjamin in his letter to Dargan. This

¹ *Pickett Papers*.

² *Ibid.*

³ *Ibid.*

⁴ See the clippings in the *Index* May 14, 21. The latter issue informs us that the commander of the *Vesuvius* was reprimanded and forfeited his promotion.

seems to leave only a question of veracity between Mr. Cridland and Mr. Benjamin. The former said he told the latter that he was going to Mobile at Lord Lyons' request to do what Magee had done as acting-consul. Mr. Benjamin said Cridland told him he was going as a private individual, which contention seems to be supported by what Cridland appears to have told the *Whig*. Both Lord Lyons and Cridland admitted that he had an *appointment* as acting-consul, but denied that he had a commission: Cridland seems to want Lord Russell and Mr. Benjamin to understand that he did not call it a commission merely because it was addressed to M. Portz. The fact that Moore wrote the order for Cridland to go to Mobile does not invalidate the fact that the appointment was really made by Lord Lyons, who was given *carte blanche* by Lord Russell. Cridland's mention of Lord Lyons was direct disobedience to repeated orders and probably tended to arouse the first suspicions. Again, Cridland wrote the Confederate Secretary of State that he did not know what to do with the archives, and as he had just learned of the orders forbidding communication with the Legation, must ask instructions from the Foreign Office; the same day he ignored the very circular he cited, and wrote Lord Lyons that he had arranged to leave the archives with the Dutch consul! In the light of Mr. Benjamin's correspondence with Governor Shorter and Mr. Dargan it seems incredible that he would have permitted Cridland to proceed to Mobile, if he knew it was as acting-consul and by Lord Lyons' orders. Furthermore, it was more to Cridland's interest to lie than to Mr. Benjamin's; the latter knew he had no popularity to lose, and was rather indifferent to public opinion; Cridland's consular future probably depended on his convincing his superiors that he had not deceived the Secretary of State. He appears to have succeeded.¹

¹ N. Y. *Albion*, February 3, 1866.

CHAPTER IX

THE NEW ORLEANS CONSULATE

THE name of Mure was not destined to be very popular in America during the Civil War. We saw that Robert Mure was roundly excoriated at the North for carrying Bunch's mail; his cousin, William Mure, consul at New Orleans was equally successful in arousing the animosity of the South. He seems to have been alert to the interests of British citizens, particularly those in poverty and sickness, some of whom were cared for at his expense.¹ Apparently he had no direct intercourse with the Richmond authorities, though Lord Russell suggested him as a suitable person to broach accession to the Declaration of Paris. But he did have frequent intercourse with the Louisiana officials.

In the London *Times* for June 13, 1861, appeared a letter from W. H. Russell, dated New Orleans, May 25. The following passage was copied in many English and American papers, and excited much comment and animadversion, particularly in the South.²

In no country in the world have outrages on British subjects been so frequent and so wanton as in the States of America. They have been frequent, perhaps because they have generally been attended with immunity. Englishmen, however, will still be a little surprised to hear that within a few days British subjects living in New Orleans have been seized, knocked down, carried off from their labor at the

¹ London *Times*, Aug. 3, 1861. N. Y. *Times*, Oct. 12.

² Also see issue for June 19.

wharf and forced by violence to serve in the volunteer ranks! These cases are not isolated. They are not in twos or threes but in tens and twenties; they have not occurred stealthily in byways, they have taken place in open day and in the streets of New Orleans. These men have been dragged along like felons, protesting in vain that they were British subjects. Fortunately their friends bethought them that there was still a British consul in the city who would protect his countrymen . . . Mr. Mure . . . made energetic representations to the authorities, who after some evasion, gave orders that the impressed "volunteers" should be discharged and the "Tiger Rifles" and other companies were deprived of the services of thirty-five British subjects whom they had taken from their usual avocations. The mayor promises it shall not occur again.

Mure had already written to the Foreign Office about the matter, for on the 30th Lord Russell reverted to Mr. Duncombe's "old wives'" tales and informed the House of Commons that "an Englishman . . . had been seized and taken away to serve in the militia." Upon the consul's demand the governor had ordered him immediately released. Several others were "captured" but the governor said it was against his orders and illegal; these persons were released and the consul hoped there would be no repetition.¹

The Southern papers thought Russell had exaggerated the case: they maintained that two or three British subjects had enlisted for the bounty, then had changed their minds and appealed to the consul.² Russell was accused of wilful misrepresentation, and Mure was cited as a witness against him. This caused Mure to protest. He published a card to the following effect:

¹ Hansard's *Debates*, 3, clxiii, 345. Cf. *Harper's Weekly*, June 22, 1861.

² *Charleston Courier*, June 9, 16, 18, N. O. *Picayune*, July 1-15.

He had not seen Mr. Russell's letter, but that was beside the question, as he did not have to "coincide with or defend" the latter's views. It was *not* merely a case of one or two enlisting and recanting, but "since April 28 to the present date (July 5) with very slight intermissions, British subjects, some of whom had been only a few weeks in this country, were seized and forcibly carried off from the levee, the steamboat landings, boarding-houses, *etc.*, to the different places of rendezvous." If they resisted they were knocked down and made to enlist under violent threats. Gov. Moore at once granted all the redress in his power by discharging them and condemning the practise, even disbanding a company for their very flagrant misconduct in this respect. At the time of Mr. Russell's arrival thirty-five or forty "illegal musters" had been discharged, but the consul's office was still daily besieged by women imploring him to get their husbands released. He detailed a few cases and concluded by saying: "*Instead of one repenting volunteer there have been about sixty cases of impressed British subjects reported at my office.*"¹

Quite a correspondence ensued between Mure and the governor's aide, Colonel Manning, which appeared in the local papers and was copied in the English journals.² July 4, Manning informed Mure that Governor Moore had just issued orders for the release of certain of Mure's *protégés*. He remarked that the application for their release was the third complaint from Mure in a few days;

¹ *Picayune*, July 6, Washington *National Intelligencer*, July 17. The New Orleans press wanted Mure dismissed by the Confederate government (*Townsend Clippings*, xiii, 123). B. Rodriguez of New Orleans, then in Paris, saw this letter and wrote a friend at home he was surprised Mure should have written such a letter, and was afraid he had been mistaken in thinking Mure a friend of the South. *O. R. A.*, 2, ii, 591.

² *Picayune*, July 3-14. *London Times*, Aug. 13.

he explained that the "Carroll Guards", which seemed to be the worst offender, was not a recognized organization, but only a company in embryo, whose recruiting officers had no commissions from the governor. Hence were private individuals, not state soldiers, so amenable to the courts, which might be invoked to protect foreigners: but he reminded Mure that that gentleman had thrice expressed appreciation of the governor's promptitude in issuing peremptory orders rather than cause British subjects to have recourse to the "law's delay". "Were this gratuitous charge of dereliction of duty by our authorities made by an ordinary peripatetic correspondent of an insignificant journal" it might have been ignored; but when it came from a writer of Dr. Russell's reputation as "a truthful delineator" and appeared in the "most influential paper in the British dominions", the governor was justified in asking the correction of these misrepresentations by Mr. Mure, as no one knew better than he that the authorities had never sought to evade proper action, but had rather exceeded what could reasonably be demanded. Mure replied, acknowledging the governor's promptitude and regretting that Russell had expressed any doubt of it. It was to prevent recourse to *habeas corpus* proceedings that he had suggested to his excellency the issue of a proclamation that no companies formed by impressment of foreigners would be received into the service. He then called attention to seven new cases occurring in the past two days. These men, he asserted, had been seized on various fictitious pretexts and embodied in different commands, some of which were expected to leave the city soon.

Colonel Manning replied next day that orders had been issued in compliance with Moore's requests, but these protests of wives touching the brutal treatment of their husbands had so much the appearance of mares' nests that the

governor had ordered an investigation of this batch. Two of the seven had never been in the places alleged by Mure; three others had been discharged; another had left complaining of sickness; the seventh was in the workhouse for some misdemeanor and had asked to be released to enlist; as his appeal to the consul evinced a change of mind he had been remanded to the custody of the recorder. The charges of ill-treatment, Manning said, could not be substantiated. Therefore he respectfully suggested that most of those who complained were not "the victims of violence or duress. Some persons have attempted to raise companies by offering to the laboring classes inducements to enlist. The British subjects have in many instances availed themselves of the opportunity to secure the bounty money, a liberal supply of clothes and wholesome food for a few days or weeks, and when they imagine the time for departure is approaching despatch their wives to the Consulate to detail their sufferings." The governor would act in the future as in the past, but "if British subjects 'volunteer', whether in expectation of bread or bullets", they could not expect his interposition.

Mure took three days to look into the matter, then said he had informed the Foreign Office of the governor's readiness to grant relief and felt sure Mr. Russell would correct any errors he had disseminated. He denied Colonel Manning's charge of listening to vague complaints; he had carefully investigated each case, not countenancing the complaints of those who had volunteered and repented. Of the seven cases recently reported, two were arrested as deserters, but as the charge was groundless, were released before the arrival of the governor's agent. One of these reported by Manning as discharged was reported by his friends as still in custody: Mure sent his clerk to investigate, but the officer of the guard refused any information: this

happened in another case also. In support of this assertion he enclosed the affidavit of the man's wife, alleging that he had been tied, but succeeded in escaping, whereupon the wife was seized and held as a hostage until he was recaptured. He begged to remind his excellency that the latter had ordered the discharge of many who had been "illegally mustered", which would indicate that "duress" had been used. He could not assert that this was always the case, but reputable citizens had appeared at his office with the bruises to prove their statements. He thought this due to the employment of "runners", who got so much per head for recruits. He thanked the governor for the proclamation whose issue he had suggested and which he felt would mitigate if not abolish these evils.

Manning ended the discussion the same day by again reminding Mure that anyone "pursuing this illegal and reprehensible mode of enlistment" was liable to prosecution and punishment. The governor was gratified to learn of Mr. Mure's report to the Foreign Secretary, which would show the British public how little they could rely on W. H. Russell's statements.

The *Times* of August 13 asserted its confidence in Russell's truth, accuracy and candor, and alleged that after Manning had said there were only a few cases, Mure's reporting seven new ones threw him into a rage. From the correspondence, the editor thought, it seemed clear that

every strong able-bodied fellow in New Orleans not obtrusively attached to British allegiance is liable to a most unpleasant degree of persuasion to join some Volunteer corps or other. He may be safe enough from the perfectly organized corps, and when he has run the gauntlet of half a dozen press-gangs, he is liable to be pounced upon by some fellow under no control, and, in fact, unknown to the Government, roughly used, dragged about, taken to some drilling-house or yard, with

some rough fellows to keep watch on him, and unless he should have a friend to go to the British Consul and plead his foreign allegiance, be marched off to the seat of war.

These last two sentences, it must be admitted, seem a fair statement of the case, in the light of this correspondence, and that of some of the other consuls. Of course the vast majority of the people of New Orleans condemned any such proceedings; which were probably the work of the floating population of the wharves and saloons, who saw an opportunity to make a few dollars by assisting unpopular commands to procure their quota; naturally they were not over-nice in their methods. For that matter, neither were the press-gangs that the British navy once relied on. Russell met Mure in Washington a few weeks later and wrote: "Mr. Mure tells me that I am more detested in New Orleans than I am in New York . . . The charges against me were disposed of by Mr. Mure, who says what I wrote of affairs in New Orleans was true, and he has shown it to be so in his correspondence with the governor."¹

Another case of Mure's intervention was that of some of the crew of the *Ariel*. This vessel cleared from New Orleans in May, 1861, but was seized and was brought back, so it was said,² because she was owned by "Black Republicans". The crew was imprisoned, but at Mure's request the British members were released. About this time he also befriended a sailor, formerly of the Royal Navy, who had been wounded in the Crimean War. This man, after his recovery, shipped on a merchantman which was blockaded in Mobile. During this enforced idleness his wound broke out afresh, and he was sent to a hospital which soon closed for lack of funds. Magee sent him to New Orleans with

¹ *My Diary North and South*, 553.

² *London Times*, June 19. *N. Y. Times*, July 21.

the suggestion that he be sent to Canada. Being a negro, he was arrested on his arrival at New Orleans, but was permitted to go to the consulate. As he could not send him to Canada, Mure sent him to a hospital at his own expense. Russell tells us the ill-paid consuls frequently did such things, particularly Mure, Bunch and Magee.¹

Collector Hatch, of New Orleans, wrote Secretary Walker, June 6, 1861, that Mr. J. G. Robinson, a British subject, was willing to put his yacht *Gipsy* at the service of the Confederates, for the purpose of warning certain ships of the blockade. The offer was accepted, and the *Gipsy* sailed under British colors, ostensibly on a fishing trip. But on the 12th Commander Poor, of the U. S. S. *Brooklyn*, stopped her at Pass à l'Outre on the grounds that she was trying to run the blockade, and that Robinson's ownership of property in Louisiana made him an American citizen. Robinson was allowed to go ashore, but the ship and crew were detained. Robinson telegraphed Mure for advice, which the latter declined to give until he knew all the circumstances, but suggested telling the commander that it was a pleasure-trip. This telegram was shown Poor in vain: he would permit only Robinson and his servant to depart. But two days later he informed Robinson that the crew had agreed to take an oath not to bear arms against the United States; if the owner would guarantee their oath, the ship would be released. Robinson did so, and as Mure refused to notice the "outrage", appealed to Lord Lyons to demand redress and have the oath cancelled.² Mure seems to have given the minister a true account of the affair (which Robinson's letter *did not*), as the case is not listed in the

¹ London *Times*, June 19.

² *O. R. N.*, xvi, 823-5.

"Claims of British Subjects against the United States Government".¹

November 7, 1861, Matthew F. Maury, a "British subject residing at New Orleans", was arrested at Cleveland, and two days later, in the Treasury Department at Washington, the same thing happened to his brother Rutson, "late of Galveston". They were members of a large family, with extensive commercial interests in New York, Louisiana, and Texas; the charge against them was smuggling letters to and from the Confederacy. Rutson, not being allowed to go to the Legation, appealed to Mure. Both prisoners were sent to Fort Lafayette. Matthew being later transferred to Fort Warren. Lord Lyons got permission for the consuls to visit the prisoners, and there was no trouble in proving their nationality. W. L. Burt, of Boston, wrote Postmaster-General Blair that he heard Rutson say, in an office in New York, that he had brought more than a thousand letters from the South, protected by Mure's consular seal; from which it would seem Mure was as liberal in his interpretation of "official business" as Cridland and Bunch. In February, 1862, both brothers were released upon taking an oath not to aid the Confederacy, or to correspond with anyone residing therein.² Lord Lyons reported the matter to the Foreign Secretary, who upon the advice of the Crown's legal advisers, refused to re-open the case.³

Mure left New Orleans in September on sick leave, and was quite ill when he met W. H. Russell in Washington in October. According to an extract from a Southern paper, copied in the New York *Herald*,⁴ Mure visited Lord Lyons, and then returned to New Orleans, where he justified the seizure

¹ *Sessional Papers*, 1864, lxii, 345 *et seq.*

² *O. R. A.*, 2, ii, 1041-1076. Russell, *Diary*, 570.

³ *Sess. Papers*, *loc. cit.*, 350.

⁴ Dec. 14, 1861.

of Mason and Slidell, and supplied English legal authorities for a gentleman who was writing an article for a local paper. "Neither the research of Mr. Muir nor his judgment on points of international dispute [were] esteemed very highly" there, but in connection with his visit to the Legation it was taken as an indication of British policy. As W. H. Russell visited him in the hospital November 11,¹ and found him "still an invalid", and in July, 1862, he was said to have recently recovered,² the story is probably no more accurate than the spelling of his name. In October the Washington correspondent of the *Tribune*³ thought him on his way to England, so he could hardly have done what was alleged, though the acting-consul may have. Mure never returned to New Orleans, but was succeeded in May, 1864, by Dennis Donahoe, who was transferred from Buffalo.⁴

Meanwhile the consulate was in charge of George Coppell, acting-consul, who seems to have been the person who informed Lord Lyons of Magee's intentions about the Alabama state debt.⁵ February 1, 1862, he appealed to Captain Bailey, U. S. N., for the personal effects of two British subjects, who had been on the blockade-runner *Calhoun*. The request was granted only when Coppell sent a British subject under a flag of truce, to fetch the baggage. The *Calhoun* was laden with arms and ammunition: and in the opinion of General Lovell was abandoned unnecessarily by her crew. As she was "very fast and of light draft", he feared she would "prove a great pest" to other blockade-runners.⁶

¹ *Diary*, 553. Also see *N. Y. Times*, Oct. 5.

² *Hansard*, clxviii, 591.

³ Oct. 10.

⁴ London, *Gazette*, May 27, 1864.

⁵ *Cf. supra*, p. 155.

⁶ *O. R. N.*, xvii, 74-5.

During the same month, Coppel and three other consuls protested to the governor against the enlistment of aliens in the militia. The governor wrote the State Department that the law required "all residents to do military duty", but as he wished to do nothing contrary to the policy of the government, he asked how he should answer the consuls' protest. He was informed that "foreign residents are bound to do duty in the defense of the city which is their home. The President does not deem it politic to insist on their serving outside of the city defenses."¹

April 28, Admiral Farragut wrote Mr. Coppel that as the city authorities would not strike the Louisiana flag on the City Hall, he should land a detail for that purpose, and might be compelled to fire on the city, so warned all neutrals to retire. The note was not received until after the flag had been lowered.² The city was occupied by the Federals on the 29th, and when General Butler took command, Coppel speedily got at loggerheads with that mild-mannered personage, who considered all the consuls, save the French, aiders and abettors of the Confederates.³ Butler refused to recognize Coppel and suspended his functions, until at Mr. Seward's request, Secretary Stanton ordered that Coppel be reinstated, and Mr. Seward, repudiating Butler's action, requested Lord Lyons to instruct Coppel to "resume his consular character."⁴ As this controversy was with Federal authorities, it need not be detailed here. Parton⁵ has summarized it, and the *Tribune*⁶ and (London) *Times*⁷ give

¹ *O. R. A.*, 2, ii, 786.

² *O. R. N.*, xviii, 238.

³ *O. R. A.*, 1, xv, 479.

⁴ *Dip. Corr.*, 1862, 255.

⁵ *General Butler in New Orleans*, 357-9, 454-60. The correspondence is in *O. R. A.*, 1, xv; 3, ii, *passim*.

⁶ June 6, 26, 1862.

⁷ July 14.

slightly divergent views of it. The *Index* ¹ considered Coppell a "nonentity", who permitted Butler to oppress British subjects.

Henceforth Coppell was not under the jurisdiction of the Confederate authorities, but he had at least one *sub-rosa* transaction with some Confederate citizens. In 1863 he agreed to bring to New Orleans some cotton then within the Confederate lines, and owned by Confederates and British subjects; he was to sell it and receive one-third the profits. While awaiting a favorable opportunity he tagged the cotton with consular certificates saying it was the property of British subjects. These were respected by both armies, and the cotton was not confiscated or destroyed. After General Taylor's surrender, the owners could dispose of it without paying such a high percentage as had been promised. So Coppell sued for \$50,000; about \$30,000 was awarded, but the defendants carried the case to the Supreme Court of the United States which reversed the decision.²

¹ June 26.

² 7 Wallace, 542-559.

CHAPTER X

THE CONSULATE OF GALVESTON

ARTHUR T. LYNN was appointed consul at Galveston in 1850 and served until 1882 when he was succeeded by Mr. Bridget.¹ There were no subordinate offices in this jurisdiction, which included the whole State of Texas. Mr. Lynn had no controversies with the governors of Texas² and the archives contain only one communication from him to the Confederate State Department. This was dated March 10, 1863, and informed the Secretary that William Leach of Houston was a British subject; because he had declared in 1854 his intention to be naturalized, General Magruder declared him liable for military service. Mr. Lynn said he had in vain read to the adjutant-general his instructions, of which he gave a summary. April 14, Assistant-Secretary Washington acknowledged the receipt of this letter, but no further attention seems to have been given it by either the consul or the State Department.³

But Mr. Lynn had direct intercourse with the Federal naval and the Confederate military officers. We have seen that Galveston was blockaded in July, 1861. August 1, Captain Moore, C. S. A., informed Commander Alden of the

¹ *Index to Exequaturs, Reports Rel. Brit. Con. Estab.*, pt. ix, 24 *et seq.* *Almanach de Gotha*, 1850-1882.

² For this information I am indebted to Mr. E. W. Winkler of the Texas State Library, who was so kind as to examine the letter-files of Governors Lubbock and Murrah, finding nothing from or to Lynn.

³ *Pickett Papers.*

South Carolina that he had heard the latter was going to bombard the city: was this true? Alden replied in the negative. On the 3d, the Confederate shore batteries opened fire on a gun-boat which they thought was approaching too close: Alden said he waited all day for a disavowal of the act, not getting which, he steamed towards the batteries and a brief cannonading ensued. On the 5th he received a protest signed by the various consuls resident in Galveston, alleging that he had fired without notice on unarmed citizens, women and children, killing one non-combatant and wounding several. This they characterized as an "act of inhumanity unrecognized in modern warfare and meriting the condemnation of Christian and civilized nations."¹ Alden replied indignantly, recounting the above noted details and affirming that when he approached the shore the land batteries fired first. Finding that their fire did him no damage, he said he preferred to withdraw rather than injure the town. He indulged in some rhetoric, and closed with an expression of regret for the injuries inflicted upon non-combatants, "respectfully remarking that it [was] the first time [he had] ever heard that the women and children of one of our towns were under the protection of foreign consuls."² When the correspondence was sent to Flag-Officer Mervine of the Gulf Squadron, he opined that Lynn was the head and front of the affair, as he was always ready to interfere and was probably merely seeking notoriety at Alden's expense.³

As she was apparently trying to slip into Galveston in October, the American-built brig *Delta*, sailing under English colors, was captured by Captain Eagle of the U. S. S. *Santee*. Her papers and the statement of the supercargo

¹ *O. R. N.*, xvi, 605 *et seq.* *N. Y. Tribune*, Sept. 6, 1861.

² *O. R. N.*, *loc. cit.*

³ *Ibid.* 609.

made the captor think she had come out of Galveston in June, under British colors, had entered and cleared at Liverpool under American colors and was now sailing under false papers. Lynn sent an inquiry as to the name of the vessel and the circumstances of her seizure. Eagle waited until she was well on her way to the admiralty court at New York, and then wrote to the consul that he had seized her because he thought her papers were illegal.¹

Eagle's action would imply that the Federal officers regarded Mr. Lynn with suspicion. This is confirmed by a report of Commander Renshaw of the *Westfield* to Admiral Farragut in October, 1862, in which he said: "I had nearly forgotten to notice an important feature in our negotiations, which was a visit from the English consul on Sunday in full consular costume, nominally to be considered an official call, but actually I am disposed to think, more to find out my views in relation to pending matters than any particular respect for our flag; for though unexceptionally [*sic*] courteous; it was evident all his sympathies were with the rebels, having lived twenty years among them."² Mr. Lynn requested more time for the withdrawal of aliens, before the fortifications should be attacked, but this was refused.

In September Lynn had reported to Lord Lyons that four British schooners were detained at Port Sabine when that place was occupied by the Federals. Lord Lyons requested that they be allowed to go to sea, but Secretary Welles wrote the State Department that as the consul's letter rather intimated that they had entered after the establishment of the blockade, he thought a prize-court had better adjudicate the matter. Admiral Farragut said that they were well-known blockade-runners and that Lynn was "openly avowed as a notorious rebel, and a citizen of the United

¹ *O. R. N.*, 749 *et seq.*

² *Ibid.* xix, 258.

States, and voted for the secession of Texas." Captain Hewett of the H. B. M. S. *Rinaldo*, he added, was "well aware of the notoriety of Mr. Lynn's secession proclivities."¹ These "proclivities" are also hinted at in a dispatch from Colonel DeBray to General Magruder, in which he mentions some information, received from Lynn, about conditions in New Orleans.²

Whenever the consuls addressed a joint appeal, request or remonstrance to either Federal or Confederate officials, Lynn's name appeared first, and he was regarded by both sides as the ringleader in all such matters. December 22, 1862, he led in a letter to General Magruder complaining that Mayor Grover, under orders from the military authorities, had informed them that all communication between Galveston and the interior was cut off; the consuls wished to know if the order was intended to prohibit "aliens remaining at the port and who now compose the majority of the inhabitants" from obtaining food supplies.³ Magruder replied that they knew the harbor had been in the enemy's hands since October, hence it was impossible for the Confederates in the interior to communicate with the city. "Under these circumstances," he continued, "the citizens of Galveston, without regard to nationality, had been invited to the interior and transportation offered free of cost to all." More recently he had notified Galvestonians when communication must cease, and though this period had passed, he would still afford every facility for leaving if the consuls should claim the privilege within twenty-four hours from the receipt of the despatch. As to provisions, he was

¹ *O. R. N.*, *loc. cit.*, 258. Capt. Hewett was later suspected of commanding a blockade runner, while on leave of absence. See *Dip. Cor.*, 1864-5, pt. ii, 719, 777.

² *O. R. N.*, *loc. cit.*, 835.

³ *O. R. A.*, I, xv, 905.

endeavoring to arrange with the Federal officers to allow them to be sent under flag of truce.¹

Magruder re-captured Galveston in January, 1863, captured Bunch's old *bête noire* the *Harriet Lane*, and dispersed the squadron at Sabine Pass. The consuls received a formal notice from Mr. Benjamin that "the blockade of the Port of Galveston" was "at an end". This information was given "for the guidance of such of the merchants of your nations as may desire to trade with either of the open ports of Galveston and Sabine Pass."² General Magruder issued a proclamation to the same effect, but a few days later Commander Bell of the U. S. S. *Brooklyn* issued a counter-proclamation saying the whole coast of Texas was under actual blockade and he had sufficient force to maintain it.³ Mr. Seward supported this by declaring that though the blockade might have been *interrupted*, it was immediately resumed. One of the Washington correspondents⁴ thought this a fatal admission, for if ships which had cleared between "interruption" and "resumption" were captured as blockade-runners, complications might ensue.

Lynn seems to have done nothing more of interest until September when the famous *Rob Roy* slipped into Velasco, at the mouth of the Brazos. While the captain was dealing with customs officials and consignees, the owner, "William Watson of Skelmarlin", went to Galveston to deposit his papers with the consul. On his return he found that the vessel had been impressed by the military authorities; finding his protest and demands futile, he returned to Galves-

¹ *O. R. A. loc. cit.*, 911.

² *Pickett Papers. Annual Register*, 1863, 313.

³ For these proclamations and the reports of the fight see *O. R. A.*, I, xv, 65, 199. *O. R. N.*, xix, 454.

⁴ *N. Y. Albion*, Feb. 14, 1863.

ton to have Lynn approach Magruder.¹ Lynn wrote the general (October 3) that British vessels were running the blockade as the result of his proclamation of the previous January, so the consul considered that "it would be an act of deep deception should they be induced to enter these ports, to be thereafter forcibly detained for the purpose of aiding in [the] military defenses." He complained that British sailors had at various times been compelled to serve on Confederate gunboats; two had been made to enlist in the army, where one was killed and the other's health ruined. The consul complained that his letters to subordinate commanders had been ignored, and said that "from the treatment to which British seamen who have found themselves in this state [had] hitherto been exposed," he inferred that but slight regard would be paid the neutral rights of the crew of the *Rob Roy*. He considered "it proper to state that it had been [his] duty to report to Her Majesty's Government that [his] remonstrances had been fruitless to effect a due observance of the rights of British subjects in this State."² On the 21st, Magruder's adjutant-general, after taking exception to the tone and language of Lynn's dispatch, informed him that as soon as it was known that the *Rob Roy* was a British vessel, it was released, and any damage done would be paid for, but "the right to make use of foreign property in a case of absolute necessity for the safety of the country is neither asserted, waived nor discussed." As to the British seamen alleged to have been impressed, he said, they were captured on a Federal collier, and had voluntarily entered the Confederate service, from which, at the consul's request, they had been discharged, which was "an act of courtesy to the British Government."

¹ Watson, *Adventures of a Blockade-Runner*, 47-59.

² *O. R. N.*, xx, 843.

In regard to the men said to have been conscribed, the "Commanding General does not believe that they have been forced into the service, the life of one sacrificed and the health of the other impaired in an uncongenial climate". If they were in the navy, he said it was by voluntary enlistment; if conscribed for the army, the enrolling officer must have been satisfied that they were Confederate citizens by "birth, naturalization or domiciliation. . . . Death is a very common event to those in the service of the belligerents on either side." The commanding general would always be glad to have a "true representation of his acts or those of the military authorities under his command made to any foreign government", as he had always been as careful to respect the rights of neutrals as to defend those of his country.¹ Next day the following was dispatched:

HEADQUARTERS DISTRICT OF
TEXAS, NEW MEXICO AND ARIZONA,
HOUSTON, TEX., OCT. 22, 1863.

HON. J. M. MASON,
C. S. Commissioner, etc.
London, Eng.

Sir: I send you for your information a copy of a letter to the British consul at Galveston, in answer to one from him, a copy of which is also enclosed.

The consul is so unfair in his statements as to justify on my part, the belief that he is trying, out of small things, to create mischief. In case this correspondence is brought to the notice of the English Government, I beg that you will make such use of my letter as may seem best.

Very respectfully, Your obedient servant,

J. BANKHEAD MAGRUDER,
*Major-General Comdg.*²

¹ *O. R. N.*, xx, 844.

² *Ibid.* 842.

As Mason had withdrawn a month before, it is to be feared that this protest never reached Lord Russell's eyes. It is interesting to conjecture what Magruder would have done in Governor Brown's place, since he felt it necessary to report Lynn for a trifling dereliction, as compared with Fullarton's. Lynn had undoubtedly convinced both the Federal navy and the Confederate army that he was guilty of "pernicious activity in politics".

Like some of the other consuls in the Confederacy Lynn sent his dispatches for Lord Lyons to the Richmond office for transmission. In May, 1864, Lord Lyons informed Mr. Seward that the consul at Galveston had reliable information that Federal troops, the previous July, had seized, opened and destroyed the mail at Brookhaven, Mississippi, in which were official dispatches for the Legation, by way of the Richmond consulate. Not only the seals of the packet, but those of the individual dispatches were broken, the latter being torn and thrown into the streets. His lordship requested an investigation. This Mr. Seward ordered, and in August sent Lord Lyons the report of the officer who had examined the mail. He denied that any dispatches for the Legation or "*any foreign disbatches or papers of any kind whatever*" were therein; he destroyed no mail, and if any "was destroyed it was done by irresponsible and unauthorized parties."¹

From the dates of the last two incidents it will be seen that Lynn was not expelled when the other consuls were (October 8, 1863), and in fact there is no entry of a letter of dismissal in Mr. Benjamin's letter-book; Mr. Benjamin seemed unaware of Lynn's existence, alluding to McRae, Walker and Fullarton when he spoke of the "three remaining consuls". The reason for this ignorance is not clear,

¹ *Diplomatic Corr.*, 1864-5, pt. ii, 606, 679 *et seq.*

but it was probably due to the fact that in Cridland's list of consular officials, sent to Mr. Benjamin in 1862, Lynn's name is missing; nor was Fullarton aware of his existence. Furthermore, as noted at the beginning of the chapter, the only letter Lynn wrote the State Department was acknowledged by Mr. Washington, and the Secretary may never have seen it. The official circulars about the raising of blockades, *etc.*, which were sent the consuls were, of course, addressed by the clerks and sometimes sent to collectors of the ports or to commanding generals for distribution, and were not always acknowledged by the recipients. On the other hand, if Mr. Benjamin were cognizant of Lynn's presence, he may have thought it advisable to let him remain, as he had not been so obstreperous as the others, and because of the trade with Matamoras. A glance at the map will show that not only was land communication between Galveston and Brownsville feasible, but for most of the distance there are inlets and creeks that make it possible for light-draught vessels to go without being perceived by the men-of-war. The owner of the *Rob Roy* tells us that "between the Mexican town of Matamoras and the American town of Brownsville, there was a ferry and by this ferry was the only communication between the Confederate States and the rest of the world.¹ The Rio Grande being a neutral river could not be blockaded; but supposing it to have been practicable to have shipped goods in small vessels up the river direct to Brownsville, or shipped [*sic*] cotton direct from that place, any vessel bound to or cleared from that port, would have been liable to capture on the open sea. Brownsville being declared a blockaded port by the sea, though not through Mexico, it was therefore necessary to

¹Mr. Watson is referring to conditions in 1863-4, but as we know, this was not absolutely true then or later. Indeed his own vessel was later engaged in entering Velasco and Galveston.

have all goods and correspondence passed through a neutral port.”¹ Goods could be landed at the Mexican side of the mouth of the river, carted to Matamoras and ferried thence to Brownsville. Mr. Watson found Züm, the British consul at Matamoras, willing to initiate him into the intricacies of blockade evasion,² and with a big demand here for cotton, Mr. Benjamin may have thought it expedient to have at Galveston a colleague of Mr. Züm who could communicate with him under official seal—a practise to which, he had reason to believe, consuls were not averse. Lord Russell had instructed Lord Lyons to tell Mr. Seward that the British government considered trade between England and Matamoras perfectly legitimate; if some of the goods were later shipped across the frontier, that was beside the question. He intimated that there was as much of this trade from New York to Matamoras as from London and Liverpool.³ Be that as it may, Lynn was the only British consul within the Confederate lines not expelled by Mr. Benjamin in 1863; the most probable reason seems to be ignorance of his existence.

¹ Watson, *op. cit.*, 19. For confirmation of this see the correspondence between the U. S. naval officers and the British consul at Matamoras. *O. R. N.*, xx, 741, 777.

² Watson, *op. cit.*, 23, *et seq.*

³ *Sessional Papers*, 1863, lxxii, 507 *et seq.*

CHAPTER XI

THE COMMERCIAL RELATIONS OF THE CONSULS

WE saw in Chapter II that a consul's functions are supposed to be entirely commercial, but the subsequent chapters showed how the fortunes of war made the consuls in the Confederacy take an active interest in political events, while their ordinary duties were decidedly circumscribed. The correspondence of the British consuls with the Foreign Office was necessarily desultory and little of commercial significance has been published. As the unpublished correspondence is not accessible to students, this chapter will be only a brief survey of some of the features of Confederate commerce with which the consuls naturally came in touch.

Before actual hostilities commenced Lord Russell offered the Manchester Chamber of Commerce the services of the consuls for "the dissemination of the wants of the cotton trade and the acquisition of information relative to supplies":¹ the Government was not willing to incur any expense, but the consuls might incidentally ascertain facts of value in connection with prospective crops, or the amount of cotton in storage. Only three of the consuls—Bunch, Molyneux and Cridland—appear to have made reports. According to the *Charleston Courier*,² they sought to impress their government with the fact that cotton and recognition were inseparably linked. August 8, 1862, Cridland

¹ N. O. *Delta*, Feb. 12, 1861.

² Sept. 25, 1861. This was said of *all* foreign consuls in the Confederacy.

reported that there were still in the South 3,000,000 bales, far removed from danger of capture. He estimated the prospective crop at 1,000,000 bales, and affirmed that no more would be planted unless the ports were open within seven months. About 800,000 bales, he thought, had been destroyed since the war commenced, and only a quarter crop had been planted. The price in Mobile was ten cents per pound, in the interior fourteen cents.¹ Five days later Bunch wrote that under ordinary circumstances the crop for 1862 would have been 4,500,000 bales, but as it was, not more than 1,500,000 had been planted, of which not more than four-fifths would be cropped, but this, he thought, underestimated the supply from Texas. He believed 750,000 bales of the crop of 1860 were still on hand, but the rest had been sold before the blockade was instituted. Of the crop of 1861, amounting to 2,750,000 bales, 1,000,000 had been destroyed to prevent its capture, but the rest was stored in the interior: much of it had been bought by foreigners who hoped to preserve it as neutral property. About 50,000 bales had gotten successfully past the blockade, but he thought 3,950,000 bales were still in the South.² October 7, Cridland reported that between 2,750,000 and 3,000,000 bales were on hand; 600,000 to 700,000 had been destroyed or shipped to Europe. Only about 250,000 bales would be produced that season, all of which would be consumed by Southern factories.³ November 24, Bunch wrote that since the harvest, he would add about 250,000 bales to his estimate of the cotton on hand, so he "roughly calculated" that the supply of upland cotton was 4,250,000 bales; sea-island cotton was omitted, as the islands were in the hands

¹ *Sessional Papers*, 1863, lxxii, 28.

² *Ibid.* 29. The *London Index* (Nov. 26, 1862), thought Bunch's estimate too high. *Cf.* issue of Nov. 29, and Hansard, clxix, 1728.

³ *Sess. Papers*, *loc. cit.*, 48.

of the Federals. He thought that the stock of tobacco amounted to 100,000 hogsheads. Next week Molyneux said Georgia had fallen from first to third place as a cotton state, Mississippi being first and Alabama second. About 260,000 acres had been planted in Georgia, yielding 60,000 bales of 500 pounds each: ordinarily 700,000 bales from 3,000,000 acres [*sic*] would be the crop. From the rest of the South he expected 900,000 bales. The crop of 1861 had been estimated at 4,500,000 bales; subtracting from the crops of 1861 and 1862 that which had run the blockade, that used at home, and that destroyed to prevent capture, not over 3,500,000 remained in the Confederacy. As the Federals had occupied the best grain regions of Kentucky, Tennessee, North Carolina and Virginia, there would be less cotton and more foodstuffs planted in the cotton states.¹

In this connection some British statistics are interesting. In 1865 the Commissioners of the Customs estimated that during the war the lack of Southern cotton had caused a loss of over £60,000,000 to Great Britain.² The following figures throw some light on this estimate.

COTTON IMPORTED DURING THE WAR³

Year.	Million Cwt.	Value in Millions of Pounds Sterling.
1860.....	14	35
1861.....	12	40
1862.....	4	30
1863.....	7	55
1864.....	9	75
1865.....	10	65

¹ The last two reports are taken from the *Richmond Record* for July 7, 1863, which contains the comments of some foreign journals on this estimate.

² *Sess. Papers*, 1866, xxvi, 5 *et seq.*

³ Bowley, *England's Foreign Trade in the 19 Century*, 657. Also see Levi, *History of British Commerce*, 426 *et seq.*

That is, the import of 1863 was half that of 1860, but cost twenty millions more: the import of 1864 should have cost twelve and a half millions less than that of 1860, but actually cost more than twice as much.

The possible destruction of cotton had caused anxious thought to many people. Mr. Benjamin had agreed to pledge the Confederacy not to destroy neutral merchandise in danger of capture if the neutral governments would make a formal agreement to prevent the enemy's obtaining any profit from this merchandise.¹ Tentative approaches were made to Consul Moore to act as intermediary in securing English purchasers for cotton. He declined, and on his next visit to Washington discussed the matter with Lord Lyons. He consulted M. Mercier and it was agreed that they should act in concert in trying to get Mr. Seward's written assurance that neutral cotton, if spared by the Confederates, would not be seized by the United States authorities. Of course their efforts were fruitless.² Lord Russell considered, under these circumstances, that it was quite legitimate for the Confederates to destroy cotton, the profits from which would otherwise be used against them.³ Accordingly, in August, 1862, Stuart, chargé d'affaires, wrote Magee:

Her Majesty's Government have considered in connection with the law advisers of the Crown, Consul Bunch's dispatch of May 12, and Consul Molyneux's of May 10, enclosing a letter addressed by the Secretary of State of the Confederate States to a mercantile firm, respecting the destruction, in the presence of the enemy, of cotton held by foreigners. I have consequently been instructed by Lord Russell to direct you to give advice in the following sense to any of Her Majesty's subjects whose property may be destroyed in those States.

¹ *Pickett Papers*.

² *Sess. Papers*, 1863, lxxii, 57 *et seq.*

³ *Ibid.* 12-14.

It is the opinion of Her Majesty's Government that foreigners being the proprietors of cotton in the Southern States will have no ground of complaint against the *de facto* Government of those States if cotton should be destroyed with the sanction of that Government, and for the purpose of preventing its falling into the hands of the opposing forces. This is one of the liabilities to which foreigners are exposed in a state which is carrying on war. Should, however, the Confederate States obtain hereafter the position of a recognized kingdom or Confederation, the losses thus occasioned to foreigners might form a fair and reasonable ground of appeal to the equitable consideration of the Government so established, and it will therefore be desirable that the best and most authentic evidences should be preserved of the true ownership of the property which may be thus destroyed.¹

Accordingly we find Bunch, in the following autumn, issuing to Hopley and Company of Charleston, consular certificates of ownership of cotton bought by them for an English firm.² Lord Russell took a similar position in November when informed by the Liverpool Chamber of Commerce that British-owned goods were on a Federal merchantman captured by a Confederate privateer. He said that British property on a vessel of either belligerent was subject to all the rules of war, but the owners might make a claim for compensation in the Confederate prize-courts.³

Mr. Benjamin construed these statements to include impressment of neutral property, and so informed Secretary Seddon, September 30, 1863, when he ruled that such property was not exempt. Before Lord Russell had issued these instructions Cridland had protested (May, 1862) against the proposed destruction of some tobacco, partly owned by

¹ *N. Y. Times*, Aug., 1862. *Richmond Record*, July 10, 1863.

² *N. Y. Times*, Jan. 25, 1863.

³ *Richmond Whig*, Apr. 23, 1863.

Englishmen.¹ As we saw in Chapter IV, Mr. Benjamin refused to receive this protest. In the previous October, when a petition under the Sequestration Act was filed against 2,500 hogsheads of tobacco, which Cridland thought was owned by the Belmonts of New York and the Rothschilds of London, he made no protest but reported the matter to London. Lord Russell took the ground that this was contrary to international law, and sent Cridland explicit directions to "remonstrate strongly . . . on the hardship and injustice of confiscating the property of neutrals under the Sequestration Act."² Copies of these instructions were sent the other consuls. In July, 1861, Cridland had written Acting-Secretary Browne in regard to 3,500 sacks of coffee, owned by a British subject, which formed part of the cargo of a captured vessel. Browne referred this to Attorney-General Benjamin,³ with what result, does not appear.

Much of the consuls' attention was devoted to blockade-runners, as the Confederate regulations required masters of foreign vessels to present clearance, manifest and bill of health to the consuls, who issued then all other necessary papers.⁴ We are told that in 1863 and 1864, when a blockade-runner's papers were presented to Lynn, "he received the papers and noted the arrival in the ordinary way."⁵ Another phase of this was the issue of temporary registers. "As there was considerable risk and danger from Confederate privateers on the seas at that time, a great many

¹ *Pickett Papers*.

² *Sess. Papers*, 1862, lxii, 116. The Sequestration Act is in C. S., *Statutes at Large*, 2d Session, 1st Congress, 201. For accounts of it see Schwab, *op. cit.*, 113. Rhodes, *History of U. S.*, iii, 464. *Charleston Courier*, Oct. 25, 1861.

³ *Pickett Papers*.

⁴ Walden, *Compilation of the Tariff Act of the C. S. A.*, 222.

⁵ Watson, *Adventures of a Blockade Runner*, 50 *et passim*.

American shipowners deemed it expedient to put their vessels under a foreign flag, generally the British flag. To effect this, the usual way was to procure a British subject to assume the ownership, or stand godfather, as it was called, and a bill of sale was made out transferring the vessel to him, and if the transfer was made within the United States, the British consul granted a provisional register to take the vessel to a British port. The British subject, or godfather, granted back to the real American owner letters or power of attorney, to do what he pleased with the vessel, so that it often happened that some British subject—often a clerk or a lad in a shipping office—was nominal owner of several vessels.”¹ The vessel was then dispatched to some British port, entered on the shipping list and a permanent register secured. Of course, Confederates as well as Federals resorted to this simple device.

This custom gave great offense to the officers of the blockading squadrons. In June, 1861, Porter complained that “vessels of various kinds, commanded by Americans, with American crews, leave this port [South West Pass, Mississippi River], with provisional registers to last six months or until they can arrive at an English port where there is a registrar; these are *bona fide* American vessels and owned in New Orleans. The English consul, who has visited the ship, asserts that the transaction is a proper one and that the English Government is responsible for this act. Under the circumstances, vessels so registered are allowed to pass out during the time allowed neutrals to depart, but it appears to me that this arrangement is liable to great abuse. . . . It would no doubt be a relief to all commanding officers to be instructed on that point.” Capt. Poor had made a

¹ Watson, *op. cit.*, 13 *et seq.*

similar complaint and request.¹ The assertion of Mure, as to the propriety of his acts was based upon the instructions issued British consuls under the Merchant Shipping Act of 1854, which authorized the consul to issue a provisional license to a ship bought by a British subject in a foreign port, and prescribed the forms to be used. As a result of these complaints, Secretary Chase sent copies of these instructions to Secretary Welles and declined to "define in advance the duties of naval officers" in regard to the treatment of such vessels, leaving it "mainly to their good sense and sound discretion." If they had good reason to suppose the sale "collusive", in contravention of British and American law, and the registers therefore unlawful, "the vessels should be sent into port for legal proceedings." Welles forwarded copies of this letter and its enclosures to commanding officers without comment or further instruction.² That these officers did not consider Consul Mure over particular in his scrutiny of such matters as passports, clearances and registers is indicated by the following from Flag-Officer Mervine to the Secretary of Navy, August 3, 1861. "I would call the attention of the Department to the proceedings of the British consul at New Orleans in the matter of provisional registers. A single instance will suffice. He certified that the *C. P. Knapp* cleared from New Orleans on a certain day with a certain cargo of rice. Her log shows that on that day she was at Berwick Bay, from which place she subsequently cleared with a smaller cargo."³

¹ Porter's letter is in *O. R. N.*, xvi, 533. Poor's, *Ibid.* 528.

² *O. R. N.*, v, 759.

³ *O. R. N.*, xvi, 649. Also see 688. Berwick or Atchafalaya Bay is about eighty miles, as the crow flies, overland from New Orleans, and by the circuitous route a vessel would have to take, much farther, but as it was connected with New Orleans by railroad a captain could take his papers thither and return the same day. See Plate 135 A in the Atlas to *O. R. A.*

Commodore McKean suspected Magee of similar practices,¹ and Lynn, who was issuing such registers, was regarded with suspicion by several officers.² The Confederates also were inclined to look askance at many of these transferred blockade-runners, as "some of them were suspected of being owned by and in league with the Yankees, and had no love for the South, their object being only to make money, or perhaps a worse purpose, by acting as spies."³

Blockade-runners were required to take at least a third of their cargoes from goods owned by the Confederacy, and later the Treasury Department assumed supervision of the trade; this caused much friction with the State governments and was eventually abandoned.⁴ It was natural to suppose that the units of the Confederacy would be touchy on the question of state-rights, and all such matters as conscription, suspension of *habeas corpus*, impressment and regulation of the blockade called forth numerous protests, those of North Carolina and Georgia being the most emphatic, South Carolina (*mirabile dictu*) not being so assertive.⁵ Some idea of the extent of the business done by blockade-runners may be gotten from the customs receipts.⁶ From the organization of the Confederate Treasury to November, 1861—

¹ *O. R. N.*, xvii, 57.

² *Ibid.* xvi, 749; xx, 115; xxi, 158.

³ Watson, *op. cit.*, 54 *et seq.*

⁴ Smith, *History of the Confederate Treasury*, 92.

⁵ Moore, *Rebellion Record*, viii, 590 *et seq.* Stovall, *Life of Toombs*, 273 *et seq.* Fleming, *Civil War and Reconstruction in Alabama*, 96. Smith, *op. cit.*, 46, 92 *etc.* Schwab, *op. cit.*, especially Chapter X. Dowd, *Life of Vance*, 71 *et seq.* Townsend, *Collection of Clippings*, xxi, 541 *et passim.* (Pamphlet) *Correspondence between Gov. Brown and Pres. Davis*.

⁶ A good idea of the business of some of the ports is given in the Charleston *Yearbook* for 1885, pp. 557-563. Of the 81 ships there named many made 18 voyages. Two successful voyages would pay for a ship and leave a profit.

that is, before the blockade was a serious obstacle—they amounted to \$949,612.84. During the same time, the export duty on cotton was \$1,311.65. For the year beginning February 17, 1861, the customs receipts totalled \$1,270,-875.48. From February 18 to December 31, 1862, they amounted \$668,566. From January 1 to September 30, 1863, \$934,798.68: export duty on cotton, \$8,101.78.¹

The share of this which went through British consulates can not be determined accurately, as the commercial reports for this period contain no statements from the consuls in the Confederacy, and their unpublished correspondence is not available.² But some notion may be gained from the reports of English custom-houses. That of importations for 1860, spoke only of goods from the United States; the subsequent reports divided American goods into those from "North Atlantic", "South Atlantic", and "Pacific States". The total from the United States in 1860 was valued at £44,727,169; in 1861, Northern States, £21,729,174, Pacific, £705,722, while the Southern States were credited with nearly as much as the other two combined;³ that is of course partly due to the fact that so much of the produce of the Central States was transshipped at New Orleans, and some of the items would suggest that "South Atlantic" included Gulf ports, and perhaps Baltimore. Making allow-

¹ Capers, *Life and Times of Memminger*, 428, 432, 438, 457. Mr. Capers was chief clerk of the Confederate Treasury.

² Letter from Foreign Office, Oct. 17, 1910. The statistics given in this and the following paragraphs are drawn from the *Sessional Papers* of Parliament, 1861-6. They are not intended to be exhaustive or final, but given simply to show the general state of the commerce that may reasonably be presumed to have been under the supervision of the consuls. For a concise view of the effect of the war on British-American trade see Bowley, *op. cit.*, chapter iv, section 3; Levi, *op. cit.*, part v, chapter ii.

³ See Table I, below.

ance for that, the table on the next page is interesting as giving some idea of the amount, value and variety of goods sent from the Confederacy to England during the years the British consuls were exercising their functions. Furthermore, there were "considerable *indirect* supplies from the Southern States through the Bahamas, which appear in our trade accounts as imports from those islands. These have risen from a value of £463,792 in 1862, to one of £2,282,713 in 1863, out of which the value of the cotton was £2,194,385, nearly all American produce."¹ The imports from the Confederate States to Nassau in 1861 and 1862 were as follows:²

	Cotton.	Tobacco.	Naval Stores.
18611587 bales	318 cwt.	2063 bbl.
186213,494 bales.	997 cwt.	5700 bbl.

In 1861 the English imports of American cotton fell from 9,963,309 hundred-weight to 7,316,909.

¹ *Sess. Papers*, 1864, xxx, 328 *et seq.*

² *Statesman's Yearbook*, 1865, 566.

TABLE I
IMPORTS FROM SOUTHERN STATES TO GREAT BRITAIN

Article.	Unit.	1861	1862	1863
Arms		£234 worth	£20 worth	
Bacon	cwt.	3618	22182	31156
Bark	"	17798	23064	15232
Beef (salt)	"	3219		3461
Bones	tons	412		
Books	cwt.		2	
Butter			320	143
Cedar	tons			138
Clover-seed	cwt.		2126	1673
Copper-ore	tons	1058		
Copper (miscellaneous)	"	131		
Cotton	cwt.	6,746,449	30,431	9,973
Cotton-seed	tons	1964		
Flour and meal	cwt.	484,534	115,650	72,234
Furniture				£82 worth
Fustic	tons			20
Grease	cwt.			3,044
Guano	tons		7896	
Hams	cwt.	555	3719	216
Hemp (rough)	"		291	
Hides (wet)	"	18395	631	965
Hops	"		20	
Iron	tons			851
Lard	cwt.	19201	6357	1861
Lard-oil	"		105	
Linseed-oil	tons	332	120	120
Machinery	cwt.		20	
Mahogany	tons	388		25
Maize	qrs.	329,241	79,354	27,802
Oil paintings			8	
Palm-oil	cwt.			903
Petroleum, crude	tons			364
Petroleum, refined	gals.			372,302
Pork (salt)	cwt.		2955	2312
Rice, husked	"	33389	2628	
Rice, rough	qrs.	1669		
Rosin	cwt.	117345	8086	698
Skins—bear, martin, otter, etc.			749	
Staves	loads	3460	283	743
Sugar	cwt.	20,887	2	
Tallow	"	13,393	4796	7068
Tar	lasts	546		
Tobacco	lbs.	14,523,468	3,000,952	2,584,268
Tree-nails	loads	57	159	147
Turpentine	cwt.	34,888	3120	
Turpentine-oil	"	48037		644
Wheat	qrs.	105,126	67681	9162
Wood (split and sawn, oak, pine, etc.) ...	loads	66152	863	1249
Wool	lbs.	118186		
Total value		£26,947,898	£1,069,325	£515,442
Total value of exports, same period to same regions		241,516	58,509	43,409

The second column of Table I would seem to indicate that after their capture various articles were exported from New Orleans, which had come from the Northwestern region down the river. During this year two vessels are reported as coming from South Atlantic to British ports, while 155 arrived from Northern ports. In 1863 the discrepancy was still greater, 1 from the former, 206 from the latter. These were probably the vessels entered as owned by citizens of the respective states, as there is reason to believe that many of the "British owned" vessels with temporary registers made the trip to England. Of course most of the blockade-runners stopped in the Bahamas, Bermudas, *etc.* British underwriters aroused Mr. Seward's ire by insuring them.¹

It is interesting to compare the foregoing table with the following table of exports to the South Atlantic States. Pickles in II is as surprising as oil-paintings in I.

TABLE II
GENERAL EXPORTS FROM BRITISH TO SOUTH ATLANTIC PORTS IN 1863

Article.	Quantity.	Article.	Quantity.
Alkali.....	10,523 tons.	Iron (miscell.) ...	795 tons.
Apparel, old and new.....	£15 worth.	Linen ".....	142,965 yds.
Bags.....	6467 doz.	Paper.....	18 cwt.
Beer and ale.....	120 barrels.	Pickles, etc.....	£716 worth.
Coal.....	7316 tons.	Salt.....	7015 tons.
Hosiery, pair.....	664 doz.	Spirits.....	1147 gals.
Earthenware.....	1043 packages.	Tin (misc.).....	1471 cwt.
Glass bottles.....	493 cwt.	Woolens (misc.) .	9737 lbs.

In 1863 Consul Bernal reported that Baltimore ship-owners had a decided advantage, as Confederate privateers had standing orders not to molest their vessels.² The hint was probably not lost upon British merchants. This year

¹ *Sess. Papers*, 1863, lxxii, 207.

² *Ibid.* lxx, 517.

for the first time a special appropriation is asked for the vice-consulate of Key West: hitherto it had been included in the estimate for Mobile.¹

The Foreign Office sent out a circular in August, 1864, to all its consuls, requesting a report on the prospect of securing resin to supply the loss occasioned by the war. Coppel was the only official in the South to reply. He estimated that in Florida, Alabama, Mississippi and Louisiana about 80,000 barrels were stored in pits, all of which were within the Confederate lines. The price at New Orleans was \$45 to \$55 per barrel. The United States forces would probably consume more than the local supply. New Orleans had imported resin from the interior as follows:

1859-60	72,245 bbl.	at \$1 per bbl.
1860-61	74,558 "	" 0.80 "
1861-62	277 "	" 2-15. "
1862-63	222 "	" 19.75 "
1863-64	90 "	" 39.66 "

Consul Donahoe, in his report for April, 1865,² covering the last five years, discreetly dismissed the period during which New Orleans was blockaded in a single sentence, and in his tables of British shipping at New Orleans from 1860 to 1864, omitted 1861. But the following statements may be noted. The arrivals at New Orleans were as follows:

	1860	1861	1862	1863	1864
Coasting Trade.....	1918	1579	241	2045	2,981
River Trade	3566	3371	1456	655	1414

As these calculations are from September 1st to August

¹ *Sess. Papers*, 1863, xxxvii, 274.

² *Ibid.* 1865, liv, 277 *et seq.*

³ *Ibid.* 1866, lxix, 68 *et seq.* The *Commercial Reports* for 1861 contained the documents for 1860 and so on. Those of the next three years contained none from the Confederacy.

31st, we can easily perceive the effect on the coasting trade of the blockade and the capture of New Orleans. Note also how the river trade fell off after the capture of New Orleans and revived after that of Vicksburg. The report of cotton exported to Great Britain was as follows: 1860, 994,695 bales; 1861, 1,016,716 bales; 1862, 749,485 bales; 1863, 986,622 bales; 1864, 717,328. From these figures, we may conclude that Mr. Donahoe's predecessors were not utterly ignorant of attempts to evade the blockade. Another item of interest was the fluctuations of London exchange; it was lowest in September, 1861, at 101, highest in 1863, at 322½.

February 6, 1866, Consul Bernal reported that the number of British vessels entering and clearing at Baltimore had steadily increased from 1861 till by 1865 it was more than doubled; he ascribed this to the increase of "white-washed" vessels, i. e., "transferred to nominal British owners and put under our flag during the progress of the war."¹ Consul Smith reported that Federal soldiers had destroyed the Savannah archives in 1864, so he could obtain no clear idea of business during the war.² Lynn wrote: "Since the commencement of the war no reliable data of the amount of trade carried on in Texas can be given, and since it was under circumstances which cannot exist in times of peace, any statistics I might give would now be of very little practical value."³ He estimated that since the removal of the blockade trade had been over 100 per cent greater than for any equal period before the war; which he attributed not only to the dearth caused by the blockade, but also to the demand for white laborers, which emancipa-

¹ *Sessional Papers*, 1866, lxx, 99 *et seq.*

² *Reports Relative to British Consular Establishments*, pt. iv. 83.

³ *Sess. Papers*, 1866, lxx, 248.

tion had stimulated. Walker merely remarked that "the war which broke out in 1861 interrupted all *legitimate* commerce between the State and other countries up to July 1, 1865 "¹—which suggests that what he knew about illegitimate trade, if divulged, would cause a vacancy in his office. Fees for pilotage had increased about fifty per cent, owing to the destruction of beacons, shifting of channels, *etc.*

The tone of the various documents makes it fair to conclude from the foregoing statistics that the consuls were quite alert as to what was going on in business circles, and if they had not fostered blockade-running, had certainly not hindered it. Apparently no systematic reports were made, as the capture of such documents would tend to implicate consuls as aiding blockade-running and the Foreign Office as conniving at it. This is of course purely hypothetical, but doubtless the American minister to London would have accepted it as a valid assumption.

¹*Session Papers*, 1866, lxx, 256. (*Italics mine.*)

CHAPTER XII

THE EXPULSION OF THE CONSULS

WE have seen that from the outset there was a sentiment against permitting foreign consuls to continue their functions unless they secured new *exequaturs* from the Confederate government. The feeling was at first perhaps mainly due to the exasperation aroused by Russell's letter to the *Times* and Mure's controversy with the governor of Louisiana.¹ Let us notice the growth of this sentiment as reflected in various institutions.

First the press—as both maker and reflector of public opinion. The Charleston *Mercury* and Richmond *Whig* were the most rabid Anglophobes, while the Charleston *Courier* and the Richmond *Sentinel* were the conservatives—the latter being the administration organ; the Alabama papers rather inclined towards the *Whig* position, the Georgia journals towards the *Courier*, while the New Orleans papers were divided—the *Delta* disliking Mr. Benjamin and Mr. Slidell as much as it did the British. March 14, 1861, the *Courier* commented most approvingly on Bunch's faithfulness and diligence in the interests of Great Britain and his relations with the “residents of his consulate and the political power which issued his *exequatur*”. This was in connection with the abuse he was receiving from the North for continuing to clear British vessels after

¹ For gleanings from various Southern papers see *Townsend Clippings*, xiii, *passim*, and N. Y. *Herald*, Oct. 10, 1861.

South Carolina seceded; it was quoted with approval by the *Albion*,¹ the New York organ of British interests. July 12, the *Courier* quoted without comment the indignant dictum of the New Orleans press that Mure was only a foreign resident with no official capacity, as Great Britain had not recognized the Confederate States.² On the same date the *Savannah Republican* endorsed the same statements and added that no attention should be paid any consul till the Confederate government granted him an *exequatur*. A reader of the *Courier*³ inquired why the consuls were not told they must get them at once, but the editor did not volunteer an explanation nor did he comment on the protest of a Kingstree correspondent who objected to the presence of "consuls credited to the United States,"⁴ nor on similar opinions voiced by Alabama papers. April 10, 1862, he again commended the "faithfulness and impartiality of the British consuls, particularly of Consul Bunch of Charleston." Two days before the *Republican* had agreed with the *Whig* that *all* consuls must be dismissed till their governments recognized the Confederacy. The *Whig*⁵ had approved the following utterance of the *Montgomery Advertiser* which the *Courier* had ignored: "Since our government has now assumed a permanent form, justly entitling it to recognition as one of the independent powers of the earth, all representatives of foreign countries that do not recognize the Confederacy should be compelled to leave the country forthwith." This sentiment soon began to appear more frequently in Southern journals than did the fate of Carthage in Cato's orations; the Queen's speech to Parliament, Slidell's appearance in Parisian society, a Confederate victory, a foreign editorial, were alike considered suit-

¹ March 23, 1861.

² July 7.

³ August 8.

⁴ Feb. 28, and March 15, 1862.

⁵ April 4.

able topics with which to point this moral.¹ Commenting on Théron's letter to Gov. Lubbock and his subsequent dismissal, even the *Courier*² remarked that it was "advised in influential quarters to annul every consular *exequatur* in the Confederate States and not allow foreign consuls to remain here to plot at leisure our destruction." Two weeks later it was deploring Bunch's departure. The *Mercury*³ announced that public opinion favored the recall of the Confederate commissioners and the dismissal of consuls; in discussing the Théron episode it vituperated Secretary Benjamin for not having dismissed all the consuls long ago. The *Whig*⁴ felt that it touched Confederate pride to harbor consuls accredited to "the Lincoln government" and added: "It is competent to us to dismiss these officers and their governments have no redress but upon Lincoln. We suppose considerations of convenience or interest may have influenced our executive in forbearing to act and the same considerations may continue to operate. The foreign consuls in the Southern States are understood to be friendly to our cause, and they may have been the means indirectly of furthering the views of our Government," but this must be decided by the executive; and the *Whig* evidently thought its advice would not be taken. In its sarcastic editorial of May 18, 1863, anent Cridland's departure for Mobile,⁵ the executive received another scoring. The *Enquirer* of the same date and the *Mercury* of the next echoed the attack upon Mr. Benjamin, whom they blamed for the retention of the consuls.

When the *Enquirer*⁶ learned of Magee's dismissal, it tried

¹ *Whig*, Aug. 21 and Oct. 21.

² Jan. 26, 1863. Théron's case is adequately treated in Prof. Butler's *Benjamin*, 294 *et seq.*

³ Jan. 22 and 29, 1863.

⁴ Feb. 9.

⁵ *Cf. supra*, p. 158.

⁶ May 20, 1863.

to soothe the indignation of the Mobile and Montgomery papers by remarking that Cridland was a mere commercial agent, quite unofficial and without an *exequatur* from Washington. It thought Lord Russell intended to withdraw all consuls from the South and replace them by commercial agents, a policy which the *Enquirer* favored as permitting the protection of British subjects without the presence of consuls recognized at Washington. The London *Index*¹ had recently warned the British public that British property and British subjects in the South were dependent for protection upon Confederate forbearance: it advised recognition before the Confederates should get tired and by revoking the *exequaturs* leave "tens of thousands of British subjects and millions of British property without consular protection. It is not at all likely that the Confederate authorities would molest either, but if consuls are necessary in peace they are more so in time of war." It quoted with evident approval the comments of the Richmond papers on the Cridland embroglio.² Moore's dismissal caused it to expatiate on Confederate forbearance and give Moore the whole blame; it evidently shared the regret of the Richmond *Dispatch* that the letters-patent had not been made general.³ The *Albion* was not sure how much was due to Moore's fault and how much to "President Davis' desire to mark his resentment of Earl Russell's continued refusal to heed the Confederate claim for recognition."⁴ The *Whig* considered it a step in the right direction; "but a logical prosecution of this policy" would be the same treatment for all consuls. "When foreign governments are recognized in this emphatic manner, we think they will not be long in recognizing us. But whatever may follow, the pro-

¹ March 12 and April 23, 1863.

² June 25.

³ June 25, 1863.

⁴ June 13.

cedure is necessary in assertion of our true position and in vindication of our self-respect." It quoted approvingly the *Mobile Advertiser* of June 8, which strongly opposed Mr. Benjamin's foreign policy, objected to his letting Cridland go to Mobile at all, and said if Lyons' appointment made Cridland a consul he could re-appoint Moore to Richmond.¹ The *Mercury*² thought little was gained by Confederate complaisance in permitting consular service to be performed without consuls. "Other people keep a State Department for their foreign policy, but we keep up a foreign policy for our State Department." This was a sample of the flings at Mr. Benjamin, whose letter to Mason it pronounced an apology for dismissing Moore. The *Republican*³ upheld the President in not dismissing all consuls but dissented from Mr. Benjamin's exposition of former relations with the United States. A correspondent thought communication with the ministers in Washington should be permitted and said a general expulsion would seem like an effort to compel recognition. The official paper, the *Sentinel*, defended Mr. Benjamin, but not to the *Whig's* satisfaction.⁴

June 24, the *Enquirer* remarked that it had thought, as a result of Moore's dismissal, any new consuls would have to be accredited to the Confederate States, but an official notice from the State Department informed the public that [H. Pinckney Walker, Esq., "having submitted . . . satisfactory evidence of his appointment as acting-consul for Her Majesty for the States of North and South Carolina, is recognized as such by the Government of the Confederate

¹ See the *Whig* of June 6, 12, 15, 17, 19, 20, 23, for these quotations and similar diatribes.

² June 8 and 17.

³ June 20 and 26.

⁴ For the defense and rebuttal see the *Whig*, June 15, 17, 19, 20.

States." It quoted from the *Mobile News* a notice that the military authorities there were instructed not to allow Cridland to exercise consular functions: the *Enquirer* wished to know why Walker was satisfactory and Cridland was not. The *Whig*¹ wanted to see this "satisfactory evidence" If Walker were accredited to the independent States of North and South Carolina, the editor thought his credentials should go to Vance and Bonham, and Mr. Benjamin ought at once to appoint consuls to Great Britain; if Walker did not ask for an *exequatur*, he should not be recognized; if he was appointed to the Carolinas as a part of the United States, then he should go to Washington for his *exequatur*. The article closed with the customary denunciation of England and Benjamin. The *Enquirer*,² regretting that Congress had not passed an act for the conscription of aliens, opposed allowing "sham consuls" to act, and in support of this contention quoted from Lord Campbell's speech of March 23, in the House of Lords, in which he said the presence of consuls with *exequaturs* from Washington was a

standing derogation to the Power which received, which shelters and endures them. We are not inclined to withdraw them. We ought therefore to accredit them to the insurgent who permits them to reside. And if we do he is acknowledged. Honour forbids nations, as it does men, to run up a score of gratitude themselves, and to create a score of just resentment in its object: to offer insult at the moment we are profiting by favors. In one sense alone do the Confederates gain by the arrangement. We give them all the grandeur of forbearance. They allow the consuls to reside, and we withhold the recognition which public law entitles them to ask of us. But is not our aspect with regard to them a poor one?

¹ June 20.

² July 27. For Lord Campbell's speech see Hansard, clxix, 1724 *et seq.*

We deny their rights over their territory and yet at their hands receive the safety of our citizens.

From this the *Enquirer* argued that England expected the dismissal of the consuls and was only surprised that it had not occurred long ago. "She admits she has need of consuls in our parts—that is, has need to recognize the Confederacy, but the Confederacy must first recognize itself. . . . When will our Department of State be satisfied that we have submitted to insult and derogation enough?" The *Whig*¹ said there was danger of foreign war if state authorities should conscribe aliens, and the whole difficulty was due "to the failure of the Government to cancel the *exequaturs* of the consuls, whose very presence is a source of danger." The *Whig's* logic certainly leaves something to be desired.

About this same time² the *Whig* quoted a letter from a Londoner, which stated that at a recent dinner-party Disraeli had been asked if the Confederacy was not to blame for tolerating the consuls, to which he answered "Yes", which seemed the common opinion of those present. Even a friend of Under-Secretary Layard said the "consuls cooked up stories without scrutinizing them. 'Not one man in England would object to the expulsion of agents who do not recognize your authority and are of no use whatever to you or us as matters now stand'". From then on, the *Whig* rang the changes on the word "dismiss"—which seemed dearer to it than "requisition" was to Patrick Henry.³ October 5 the tune was rendered with a slight variation—"For nearly three years we have given Great

¹ July 11. For more of the same sort see the *Enquirer* for October 5.

² July 30.

³ July 31, Aug. 1, 3, Sept. 29, Oct. 6, 7, 13. Some of the *Whig's* fulminations were copied in the *London Times*, Oct. 26.

Britain all the benefit of representation by consuls under the control of a minister at Washington who is hostile to us." Now it wanted *all* British but *no* French consuls dismissed.

The following¹ from a correspondent of the London *Times* was quoted approvingly by Southern papers: "England must make up her mind to forego consular functionaries in Secessia or to derive for her future consuls the power to act from the only authority which exercises sway in Secessia—that is J. D."

Of course the Fullarton-Brown and Walker-Bonham controversies increased the rancor against the consuls.² The *Mercury* called Mr. Benjamin's ruling against Walker a "just decision" and hoped every Southern governor would emulate Brown, but feared that the Confederate government would not go the "full length in maintaining the dignity of the Confederacy, but [would] permit British consuls accredited to Lincoln to remain and continue to interfere with our affairs." The *Index*³ thought Fullarton had exceeded his province in discussing the character of the war, and considered the Confederacy's procedure in regard to aliens "founded on common sense and equity" and in accord with international law. His anomalous position might explain Fullarton's insult to the Confederacy, but the probable outcome would be the refusal to allow any British consul to reside in the South without an *exequatur* from Richmond.

When it was rumored that Mason had been ordered to withdraw from London the *Whig*⁴ hoped it was true, but dared not believe so; becoming assured of the fact, it insisted that the next step was the dismissal of the consuls. The *Index*⁵ said Lord Russell had succeeded in establish-

¹ *Mercury*, Sept. 1.

² *Whig*, Oct. 7, *Mercury*, Oct. 3, 9, 13.

³ Oct. 29.

⁴ October 5 and 7.

⁵ September 24 and November 5.

ing complete non-intercourse with the Confederacy, as Bunch and Magee had been withdrawn by him and Moore dismissed by Mr. Benjamin. A letter from Richmond assured the editor that Mason's recall was approved, as would be the dismissal of the consuls.

✓ This sentiment was first broached in Congress, as we have seen, by Wigfall, July 26, 1861; but the Committee on Foreign Affairs had the question postponed. Early in 1862 it came up in both houses. In the House of Representatives, Mr. Barksdale of Mississippi introduced a resolution March 3, inquiring whether consuls accredited to the United States and still residing in the Confederate States exercised jurisdiction by permission of the Confederate government in accordance with treaties of commerce, and whether any action was necessary on the part of Congress to vindicate the rights and dignity of the Confederacy.¹ Next month Senator Yancey wanted the Committee on Commerce to inquire if any persons in the Confederate States claimed to exercise the rights and functions of foreign consuls; if so, what legislation was necessary to prevent the same?² Though these resolutions were agreed to and the committees considered them, the administration managed to prevent any action in accordance with them. But it was not so successful next time. August 26, Representative Hartridge of Georgia wanted the Committee on Foreign Affairs to inquire into the propriety of requesting the President to recall the commissioners and to notify foreign consuls that they would not be recognized unless accredited to the Confederacy.³ Two days later, Mr. Swann of Tennessee wanted the Judiciary Committee to inquire if consuls had lawful power to obtain the numerous exemptions from military

¹ *Journal*, v, 47 *et seq.*

² *Ibid.* ii, 142.

³ *Ibid.* v, 317.

service which were being granted foreigners.¹ September 1, Mr. Foote of Tennessee reported from the Foreign Affairs Committee a resolution requesting the President to communicate the names of all Confederates in foreign service, diplomatic and commercial, and the names of all foreign agents in the Confederacy, with the information as to whence their *exequaturs* were derived, whether they were subordinate to the foreign ministers at Washington, together with the instructions to Confederate foreign agents and the correspondence with foreign nations.² On the 22d, in secret session, Mr. Perkins of Louisiana reported that the Secretary of State considered it inexpedient to communicate the instructions and correspondence, but sent a list of foreign agents in the Confederate States, all but one of whom had received *exequaturs* from the United States previous to the formation of the Confederacy. According to public and private law, said the Secretary, such foreign officials, having been recognized at that time by the agent of the various States since formed into the Confederacy, remained competent; undoubtedly the Confederate government had the power to prohibit the continuance of such agents within its limits, but hitherto the exercise of this power had not been deemed expedient. In September, 1861, Ernest Raven had applied for and received an *exequatur* as consul of Saxe-Coburg-Gotha for the port of Galveston: recently the Department had learned that Baron de St. André had assumed the functions of French consul at Charleston, since the formation of the Confederacy, without asking for an *exequatur*; he had since left, but if he returned, proper action would be taken to "repress this offensive assumption of consular functions." The Secretary had no information on the point, but it was probable that the

¹ *Journal*, v, 322.

² *Ibid.* 333.

consuls were under the control of the ministers at Washington, as they corresponded with Europe by sending their dispatches to the ministers, which had enabled the Department to cause correct information to reach foreign governments. In the light of this statement the committee was not prepared to recommend the adoption or rejection of the original resolution, and thought it unwise, at that time, to recommend the immediate recall of Confederate commissioners or the expulsion of foreign consuls.¹ This was the opinion of the majority: on the 30th, W. R. Smith of Alabama submitted a minority report, signed by three members, which asserted that the majority report reflected on the President, the Secretary and the commissioners, but endorsed the recommendation to do nothing.² Mr. Hartridge was a minority of the minority and wanted a third report printed.³ This lack of unanimity was reflected in the Congress as a whole and precluded decisive action, though the discussion was not unnoticed in England. The *Index*⁴ felt that it showed that the executive was still firm against the assaults of popular opinion, which was strongly in favor of allowing consular privileges only to such nations as recognized the Confederacy, so it was very probable that some such action would be taken if recognition were much longer delayed. Mr. Foote, who was the leader of the opposition and particularly disapproved the administration's foreign policy, introduced similar "recall and expel" resolutions in January, 1863,⁵ which caused Lord Campbell in the above quoted speech to ask: "And what will be the situation of Great Britain, if led by-and-by to do by interest and by con-

¹ *Journal*, v, 421-4.

² *Ibid.* 464 *et seq.*

³ *Ibid.* 467.

⁴ March 23, 1863.

⁵ The Charleston papers thought public opinion favored this resolution, See *Courier*, Jan. 16, *Mercury*, Jan. 22, 1863.

venience what self-respect and pride and justice dictate at this moment?"¹

St. André, of whom Mr. Benjamin had spoken, returned in December, 1862, and was at once told to produce his credentials. He replied that he was only temporarily in charge during Belligny's absence, and thought the provisory character of his functions necessitated only presentation to local authorities, and did not require the request for an *exequatur*.² Mr. Benjamin took this to mean that Belligny would soon return and permitted St. André to remain; but in May, 1863, he learned that Arthur Lanen was in charge of the consulate with a commission as acting-consul, issued by Montholon, consul-general at New York, under orders from M. Mercier. General Jordan sent Mr. Benjamin a copy of this, and the Secretary at once informed Lanen he would not be permitted to act, temporarily or permanently, unless he submitted proper credentials to the Confederate government. Receiving no reply, the Secretary of State wrote Lanen that his continued presence as acting-consul would not be permitted, though as a private individual he would receive "the protection and hospitality which this Government cheerfully accords to all neutral residents." A copy of this was sent General Beauregard for his guidance, and Mr. Benjamin told Mr. Slidell that though the President was aggrieved by French respect for the blockade "whose monstrous illegality" was quite evident, and by the refusal to recognize the Confederacy, he had not objected to Belligny's acting under his old *exequatur*, but he could not permit functionaries in the enemies' country to control consuls in the Confederacy.³ Evidently the French authorities placated

¹ Hansard, *loc. cit.*

² "La nature provisoire de mes fonctions ne comportait pas de la demande d'un *exequatur*." *Pickett Papers*.

³ *Pickett Papers*.

Slidell, for in December, 1863, Mr. Benjamin wrote that there would be no objection to St. André's return and if Lanen had brought a simple letter of introduction to him or to Mr. Davis, explaining the circumstances, he would have been allowed to take charge for a while.¹

The courts were not called upon to pass upon the status of the consuls, but the two points of most interest to the consuls, *domicil*, and the *liability of aliens for military service*, were frequently subjects of judicial consideration. September 23, 1861, was the limit allowed by Congress for taking the oath of allegiance to the Confederacy; failing which, there was the liability of being deported as alien enemies. In August a resident of Yadkin, North Carolina, appealed to Judge Pearson for a ruling: he said that he was an American by birth, had moved from New York to North Carolina after maturity, had resided in North Carolina forty years, married there, acted as justice of the peace, acquired property and had no desire to leave. The Judge ruled that when a foreigner came to the United States even with the intention of remaining permanently, he was an alien till naturalized, but if a citizen of one state moved to another "with like intention, his purpose [of becoming a citizen of the second state] was *ipso facto* accomplished."² In the case of Ainsley *vs.* Timmons, in December, the South Carolina Court of Appeals decided that *sojourners* were not subject to military duty; alien *residents* might depart at any time, but so long as they remained were liable to militia and patrol duty, by the statutes of the State, which were constitutional and in accord with the law of nations.³

Judge Hull, in his charge to the grand jury at Atlanta

¹ *Pickett Papers*.

² N. Y. *Herald*, Oct. 6, 1861 (extract from Richmond *Dispatch* of Sept. 23).

³ Charleston *Courier*, Dec. 4, 1861.

in the spring of 1862, recommended the prosecution of "all foreign-born citizens who have exercised the rights of citizenship and now claim exemption from military service."¹ He intimated that if such cases were brought before him, the offenders would receive penitentiary sentences.

February 24, 1863, Judge Meredith of the Richmond Circuit Court decided in a *habeas corpus* case that every citizen of Maryland and every foreigner who had once enlisted in the Confederate armies, no matter for how short a time, had thereby acquired domicil and were liable to conscription if within the age-limits.² In May, the "British Consular Guard" was formed in Mobile, to offer its services to the mayor for local patrol and police duty.³ As its name implies, it was composed of English residents and apparently its purpose was to evade conscription. A few weeks later, Judge Jones of the Confederate District Court at Mobile decided that foreigners residing in the Confederacy were entitled to the protection of the laws, in return for which temporary and qualified allegiance was due. The Confederacy might call into service domiciled foreigners and permanent residents, but not sojourners. It was not the province of the court to discuss the propriety of the consuls' presence, but the court knew of no law empowering them to exempt persons domiciled according to local laws. A consul's certificate of nationality would not exempt any one really liable, but the enrolling officer should respect it so far as to make further inquiry before conscribing.⁴ Accordingly, July 8, General Maury issued orders informing the public and the enrolling officers that in conformity with

¹ *Savannah Republican*, May 8, 1862.

² *Richmond Whig*, Feb. 25.

³ *Ibid.* May 27.

⁴ *Savannah Republican*, July 9. This was the case of McKim, a British subject.

recent judicial decisions domiciled aliens might be conscribed.¹

¹ Of the Confederate District Courts "the one in South Carolina over which Judge A. G. Magrath—formerly of the United States Circuit Court—presided became by far the most important."² In July, 1863, H. Spincken, a German who had been in the country seven years, without naturalization, who alleged that he never intended to remain though he had enlisted in the militia when South Carolina seceded, applied for a writ of *habeas corpus*, to be relieved from service. Judge Magrath refused the writ and stated the law at length. The substance of the opinion was as follows: while one remained under the authority of any government he received its protection and returned obedience, which supplied the allegiance he owed the "domicil of his origin". If this government should be at war with his native land he became an alien enemy and was presumed to return to his own country; if at war with some other country he might depart or remain, as he preferred; if he remained it was under the condition of rendering allegiance in return for protection, and the government had as much right to call on him as on native citizens to aid in its defence. Spincken's attorneys said that the phraseology of the General Orders of the War Department showed that the Act of Congress meant *domiciled* foreigners, and they contended that any other construction would be contrary to international law. The court ruled that plea out, and said it would treat with respectful consideration the opinion of a

¹ N. Y. *Herald*, August 21.

² Schwab, *Financial and Industrial History of the South*, 219. A. G. Magrath was born in Charleston, 1813; U. S. District judge 1856-60; Secretary of State of S. C. 1860-61; C. S. District judge 1861-64; Governor of S. C. 1864-5; died at Charleston, 1893. See the sketch by Gen. L. F. Youmans in the *Charleston Yearbook* for 1895, 365 *et seq.*

department in regard to an act of Congress, but was not bound thereby: the executive's function was to administer the laws which the courts expounded. If the meaning of the act were clear the question of expediency was without the court's sphere; nor could it set aside an act of Congress because it was contrary to a generally received doctrine of international law, for it was within the province of a government to determine if any modification of the law of nations was necessary for the well-being of the community. But in this case there was no conflict; Spincken was not exempt by any of the provisions of the Conscription Act, so the only question was in regard to international law. There were three classes of aliens: *itinerants*, who were exempt; *domiciles*, i. e., enfranchised aliens, not exempt; *residents*, those who had lived in the country for some time, but were not enfranchised; they were also liable to conscription. Between May, 1861, and April, 1862, resident aliens had not been called out and might have departed had they wished, but those who had remained must abide by the consequences of their decision. In time of war a year's residence was sufficient, according to American and English decisions, to establish liability: in the words of a British court of appeals, "by the general law, all foreigners resident within the British dominions incurred all the obligations of British subjects."¹

Of course these various opinions gave great satisfaction to the Southern newspapers. As we have seen, the Confederate Attorney-General, War and State Departments agreed with them, technically, but frequently chose to consider the question of expediency. According to one of his clerks, Assistant-Secretary Campbell considered Meredith's

¹ This was the opinion cited by Atty. Gen. Hayne during the Walker controversy. See chapter vi. The opinion may be found in full in the *Mercury* for July 6, 1863.

opinion not law, and Colonal Lay, of the Conscription Bureau, held the same opinion, but General Rains and Secretary Seddon agreed with Meredith, and the President was said to do so.¹

These questions of domicil and liability were not always viewed alike by the commentators on international law, and their opinions were, in turn, frequently open to different constructions. Vattel, Bluntschli, Story and Wheaton were the authorities oftenest cited in the opinions of the departments and the decisions of the courts. Vattel thought intention to remain permanently, with an extended sojourn, was necessary to constitute domicil, but even a tacit or expressed declaration of intention to remain did not preclude a change of intention.² Bluntschli said the domicil was the principal place of abode or business, together with the intention of not returning to the native land.³ Wheaton⁴ considered time the great element, and quoted Sir William Scott to the effect that if an alien remained in a country during a good part of a war, paid taxes, *etc.*, "he could not plead his special purpose with any effect against the rights of hostility". Story calls one's domicil the "true, fixed, permanent home, to which when absent he intends to return"—residence and intention constitute domicil; until the contrary is proven, the place of residence is so considered, a mere floating intention of returning to the native land sometime in the future not invalidating this conclusion.⁵ Like the modern authorities,⁶ no one undertook to

¹ *Rebel War Clerk's Diary*, i, 270.

² *Droit des Gens*, i, 193.

³ *Das Moderne Völkerrecht*, 214, 218.

⁴ *Elements of International Law*, 369 *et seq.*

⁵ *Commentaries on the Conflict of Laws*, 38-45.

⁶ Moore, *Digest of International Law*, iii, 757 *et seq.*, 816 *et seq.* Hall, *Treatise on International Law*, 244, 498. Ferguson, *Manual of International Law*, i, 119.

fix accurately a time limit, or to determine exactly the evidences of intention. The opinion of modern writers that "citizens or subjects of one country residing in another can never be forced into military service,"¹ was likewise an open question then.² Bluntschli said an alien was liable for service for local defense against brigands, pirates, *etc.*, but never in political wars;³ Vattel thought that in return for its protection an alien should assist in the state's defence, so far as his obligations to another state permitted⁴—a very elastic restriction; Story said that foreigners residing for permanent or indefinite purposes "are treated universally as inhabitants."⁵

Now the Southerners as a whole no more approved of such kidnappings as Mure complained of than did the bulk of the Northerners when similar methods were used to recruit their armies.⁶ But like the Northerners they felt that people who had lived there for some time, voted, acquired property, taken out naturalization papers (like Robert Mure), or declared their intention of so doing, were bound to help to defend their homes, and it exasperated them to have a man who had served a short enlistment, but whose ardor had cooled, demand exemption as a foreigner if he should be conscribed. In the words of an English writer,

Civil War is stern and exacting. . . . A foreigner must take the law as he finds it; he must submit whilst he remains in a country not his own, to any exceptional legislation which temporary circumstances may require. It is not for him nor for any foreign sovereign to judge whether these laws are necessary or just; he must obey them, be they never so unjust or

¹ Moore, *op. cit.*, iv, 52. Hall, 50, 209. Ferguson, 126.

² Conversation with Prof. Moore.

³ *Op. cit.*, 226.

⁴ *Op. cit.*, 302.

⁵ *Op. cit.*, 47.

⁶ Hansard, clxxv, 355 *et seq.* Russell, *Diary*, 553.

unnecessary; all that he can fairly insist on is that when any material change is made in the legal condition of the class to which he belongs, he should be allowed reasonable time to withdraw. From any illegal exercise of force on the part of the executive government or its officers, he has a right to be free, in common with all persons who, like him, are under the control and protection of the laws; and if this right be violated, the sovereign to whom his allegiance is due may interpose, by remonstrance or otherwise, on his behalf. But the interposition of a foreign sovereign for such a purpose in times of civil commotion should be sparing and cautious; for he is seldom able to judge whether that necessity which is always pleaded as an excuse for an unlawful stretch of power really exists or no; and where citizen and alien are treated alike, this, in any country accustomed to the reign of law and order, is a real, though imperfect, guarantee that the alien has not suffered and will not suffer, any great and substantial injustice. It is commonly better, therefore, to leave the foreigner to take his chance with the citizen.¹

When a British subject enlisted four times as a substitute and as regularly deserted, even the mild *Courier*² was provoked; when it heard from Baltimore that the consul had warned all British subjects who had voted at any election in America that they could not claim Royal protection, it gently remarked that a different rule had been followed in the South. Though the British gov-

¹ Bernard, *Neutrality of Great Britain*, 440. Mr. Bernard states expressly (page 444) that this does not include military service, but the quotation, without that reservation, expressed very clearly and almost exactly the Confederate attitude in this matter of alien rights. Of course the South denied that the struggle was a civil war.

² July 3, 1863, and October 6, 1862. For an inquiry as to the liability of aliens who had voted in New York school elections, see *Diplomatic Correspondence*, 1864-5, pt. ii, 700. For other efforts of the British Legation to protect from Federal drafts see *State Papers*, lv, 519 *et seq.* Bernard, *op. cit.*, 439-454.

ernment had said that neutral aliens were not to be compelled to serve, in 1862 it instructed Stuart that allowance might be made in the cases of cities under martial law or in daily peril of the enemy, and he was not to interfere for aliens "who had voted at elections or otherwise exercised exclusive privileges of citizens."¹ Charleston, Atlanta, Richmond, Savannah, Mobile were in at least as much peril as any Northern city! Attorney-General Bates decided that aliens who had voted were liable, though Mr. Seward had said only naturalized foreigners were. M. Mercier denied that even voters were, but Lord Lyons was told to abide by the opinions of the United States courts.²

It is impossible to say how much of this was known to the Confederates; but even if utterly ignorant of it, in the light of the above-mentioned propositions of international law as interpreted by their own courts they saw no reason why foreigners should be exempt when old men and lads were serving, especially as many foreigners had been most rabid secessionists.³ Furthermore the "consular guards" formed in Mobile and Richmond to offer their services to the authorities to "aid in keeping good order in the city when necessary",⁴ seemed very much like aggregations of shirkers and probably emphasized the desire to have them do real service. The Southerners were inclined to regard such organizations as efforts to evade conscription and were anxious to circumvent this attempt. "No sooner had the war begun than the British consulates became crowded with persons anxious to register themselves as British subjects in the hope of obtaining exemption from service. . . . Many had

¹ Ferguson, *op. cit.*, ii, 292. Also see Atlay's (1904) Wheaton, 248.

² Moore, *op. cit.*, iv, 53-56.

³ Russell, *Civil War in America*, 80.

⁴ *Courier*, May 25, and July 4, 1863.

already made a public declaration of their intention to become American citizens, and were only waiting till lapse of time should have perfected their title.”¹

The average citizen, in the light of the opinions of the courts and the repeated attacks of the press, seeing that the greater part of the consuls' work seemed to be issuing certificates of nationality and demanding exemptions, naturally became anxious to see the consuls suppressed, especially after Magee's recall. Mr. Davis “steadily resisted all influences” which were exerted to have him make the consuls request new *exequaturs* or depart. Most Southern lawyers, in and out of Congress, were quite familiar with the opinion of Kent and Wheaton that “no state is bound to permit the residence of foreign consuls unless it has stipulated by convention to receive them—they are to be approved and admitted by the local sovereign and if guilty of illegal and improper conduct are liable to have their *exequaturs* withdrawn, and may be punished by the law of the State where they reside or be sent back to their own country at the discretion of the government which they have offended.”² With this principle in mind, it was probably an easy matter for such politicians and journalists as thought so, to induce the majority to think a good way of securing recognition, as well as a proper assertion of self-respect, would be to dismiss the consuls. Therefore no little firmness was required to withstand this pressure. It is impossible to say just who did the withstanding; of course the President had to take the responsibility, but probably the

¹ Bernard, *op. cit.*, 445. He is speaking primarily of the Northern States, but this was at least equally true of the Southern consulates.

² Wheaton, *op. cit.*, 293. Also see Kent, *Commentaries on American Law*, i, 54. This dictum is generally admitted; see Bluntschli, *op. cit.*, 159, 166. Hall, 319. Moore, iv, 533; v, 19. Phillimore, *Commentaries on International Law*, ii, 264.

policy was Mr. Benjamin's, who was "ever active, imperturbable and influential in the councils of the administration."¹ Certainly the newspapers gave him the credit or blame therefor, and as he was already unpopular on account of his race and his disastrous term in the War Office, some of these attacks were very bitter; but, industrious, sanguine, shrewd and "feeling perfectly secure in the support of the President", he continued "indifferent to the clamors of the press".²

Shortly after Mr. Benjamin had disapproved Walker's contention,³ Fullarton appealed to him (October 1 and 3) in behalf of several British subjects residing at La Grange and Columbus, Georgia, using very much the same language he had addressed to Governor Brown, the correspondence with whom had just been published.⁴ October 6, 1863, President Davis started on his visit to General Bragg's army, by way of Atlanta. In the next mail the Secretary of State received Fullarton's letters, or in Mr. Benjamin's own words, "an exigency occurred which seemed to call for immediate action, but on which" he "would not assume the responsibility of action" in Mr. Davis' absence "without the clearest necessity". The situation was desperate; the President was on his way South, going as fast as the imperfect railway accommodations permitted; to recall him was difficult, to explain fully the circumstances impossible. In this dilemma Benjamin took a step which is probably

¹ DuBose, *Yancey*, 640.

² Butler, *Benjamin*, 245. For Benjamin's influence over Davis see pages 237-245, 255, 283, 328-332, 396.

³ Cf. *supra*, p. 130.

⁴ The facts recounted in the next few pages are drawn from the *Pickett Papers*. Some of the items may be found in Richardson's *Messages and Papers of the Confederacy*, ii; *Sessional Papers*, 1864, lxii, etc., etc.

unique¹ in American history; he decided that the consuls must be expelled at once, and called a cabinet meeting to approve his decision. The President of the United States has always kept his hand practically on the lever, arranging for consultation about any executive action that might be necessary during his absence from the capital. When Washington went on his Southern tour in 1791, he sent his cabinet explicit directions about consultations and meetings in his absence; when Lincoln was assassinated and Seward wounded, Stanton got the cabinet together, mainly for the purpose of turning the government over to Vice-President Johnson, but Benjamin here took the decisive step of expelling foreign representatives in the President's absence and without his knowledge. The Confederate cabinet at this time consisted of Benjamin, Memminger, Seddon, Mallory, Watts² and Reagan. When they assembled on October 7, Benjamin "found them unhesitating and unanimous in the conclusion that the British consular agents should be at once expelled from the Confederacy." Accordingly he issued the order in the shape of a letter to Fullarton, duplicates of which were sent to McRae and Walker. This letter stated that Fullarton's latest dispatches had been received, and his recent correspondence with Brown left no

¹ This statement is made on my own responsibility, but after consultation with Professors W. A. Dunning, C. A. Beard and J. B. Moore of Columbia University. Prof. Dunning reminded me of Stanton's action but agreed that he did not assume so much authority as Benjamin did. Prof. Moore confirmed emphatically the statement that the President of the United States has kept in close touch with the capital. Prof. Beard told me of Washington's attitude, which is shown in the *Yale Review*, xv, 190, Washington's *Writings*, xii, 35, and Jefferson's, i, 320.

² Watts' resignation was dated October 1st, but it is not known just when he left Richmond. (*O. R. A.*, 4, iii, 1184, note.) If he had gone by the 7th, Wade Keyes was acting as attorney-general.

doubt of his meaning; similar information had been given by the Acting British Consul at Charleston to the military authorities there. "It thus appears," said Mr. Benjamin,

that the consular agents of the British Government have been instructed not to confine themselves to an appeal for redress either to the Courts of justice or to this Government, whenever they conceive that grounds exist for complaint against the Confederate authorities in their treatment of British subjects, (an appeal which has in no case been made without receiving just consideration), but that they assume the power of determining for themselves whether enlisted soldiers of the Confederacy are properly bound to its service; that they even arrogate the right to interfere directly with the execution of the Confederate laws and advise soldiers of the Confederate armies to throw down their arms in the face of the enemy. This assumption of jurisdiction by foreign officials within the territory of the Confederacy, and this encroachment on its sovereignty cannot be tolerated for a moment; and the President has had no hesitation in directing that all consuls and consular agents of the British government be notified that they can no longer be permitted to exercise their functions, or even to reside in the Confederacy.

He was accordingly directed by the President to communicate the order that "you promptly depart from the Confederacy and that in the meantime you cease to exercise any consular functions within its limits".

If it be true that "international law recognizes *de facto* government only,"¹ the only question concerning Mr. Benjamin's right to issue this order is as to whether or no the consuls had exceeded the sphere of their legitimate functions. They were clearly within their rights in addressing

¹ Mason, *Questions and Answers on Public International Law*, 26.

local and central authorities in behalf of their compatriots,¹ but it is equally certain that this does not include advising them to defy the laws of these respective governments. Granting that Governor Brown's interpretation of international law² was a trifle strained, even as a "war measure", there was a chance that the soldiers conscribed by his subordinates would not be brought into actual conflict; and even if they should be, there was no certainty that any particular individuals, say British subjects, would be harmed; whereas if they threw down their arms certain death awaited them, as the Confederacy could not permit such a breach of discipline, although it had consular approval. Yet if the consuls were permitted to remain, they would doubtless continue so to advise, or if they were not promptly punished, those already so advised might have to suffer death for following this advice, while prompt action would tend to preclude this.

In reply to this order, protesting statements were made by Walker and Fullarton. Walker denied that Mr. Benjamin's assertions applied to him, except that he [Walker] was pleased to admit that no appeal had failed of just consideration. Fullarton took issue as to the meaning of "enlisted soldiers of the Confederacy". He restricted the term to those in the regular service of the Confederate government, while that government naturally used it in the broad sense of any troops in the service of "a Confederate State" or "the Confederate States", whether regulars or militia, volunteers or conscripts. So when Fullarton contended that his advice to men drafted for the Georgia militia was not given to Confederate soldiers, the Secretary of State naturally paid as little attention to the quibble as he did to the demands of Walker and Fullarton that their protests be published.³

¹ Bluntschli, *op. cit.*, 160.

² *Cf. supra*, p. 144.

³ *Sess. Papers*, 1864, lxii, 373-405.

This demand was in reference to Mr. Benjamin's dispatch to Slidell; Mason having been withdrawn, the only way to inform the British Government of his reasons for expelling its consuls was through the newspapers. Mr. Benjamin, therefore, wrote to explain the facts to the French government, so that it should not apprehend the expulsion of its consuls as long as they behaved properly.

In this letter, which he gave to the newspapers, he said that at the formation of the Confederacy there were numerous consuls and consular agents in the South, who had been recognized not only by the United States "as the authorized agent of the several States", but by the State authorities also. As under the law of nations, they were not entitled to exercise diplomatic functions, they were not accredited to sovereigns, but derived their authority from the commissions of the home government and the *exequaturs* of the receiving government. Further: "It has not been customary, upon any change of Government to interfere with these commercial officials already established in the discharge of their duties, and it is their recognized obligation to treat all Governments which may be established *de facto* over the ports where they reside as Governments *de jure*."¹ The British consular officials gave no cause of complaint on this score, and the President interposed no objection to the continued exercise of their functions. On other grounds, however,

¹ Hall, *op. cit.*, 322, says: "From the absence of any political tinge in the functions of a consul, political changes do not affect his official position. . . . If the form of government of a state is changed, or if the place at which a consul resides is annexed to a state other than that from which he received his *exequatur*, no new *exequatur* is required. The cases of the consuls in the Confederate States, nominated before the outbreak of the Civil War, who continued to exercise their functions during its progress. . . . are instances of the dissociation of consular relationship from any political recognition." For the opposite view see Wilson and Tucker, *International Law*, 192.

various causes of complaint subsequently arose." Moore's case was summarized, together with the President's "reprehension" and prohibition of communication with functionaries within the enemy's lines. Next Magee's case was reviewed, concerning which Benjamin held that the "action of the President was marked by extreme forbearance. . . . He confined himself to refusing permission that Mr. Cridland should act under Lord Lyons' instructions and to expressing the confident hope that Her Majesty's Government would in future choose some other mode of transmitting its orders." Even Lord Russell had admitted that the Confederacy was not bound to recognize the validity of Lord Lyons' orders, but asserted that Magee had aided one belligerent against the other. "This statement clearly assumes that the transmission of specie from one of these States to Great Britain in payment of a public debt to British subjects is an act of hostility against the United States which British officials cannot promote with due regard to neutral obligations. . . . No reason is given for this construction, which appears to us to be at variance with all received notions of international law," with the inevitable effect of discouraging the payment of debts due in England. "Within the last few days," he continued, "the President has been informed by communications addressed to the State and Confederate authorities by two out of the three¹ British consular agents remaining herein, that they had received instructions from their Government to pursue a course of conduct in regard to persons of British origin now resident within the Confederacy which it has been impossible to tolerate. It seems scarcely probable that the instructions of Earl Russell have been properly understood by his agents, but we have no

¹Fullarton, Walker, McRae. Note that Benjamin ignored Lynn. Cridland he considered a private individual, sojourning in Mobile by his permission.

means of communicating with the British Government for the correction of misunderstandings. You are aware that Great Britain has no Diplomatic agent accredited to us, and that Earl Russell having declined a personal interview with Mr. Mason, the latter after some time spent in an unsatisfactory interchange of written communications, has been relieved of a mission which had been rendered painful to himself and was productive of no benefit to his country. The President was, therefore, compelled to take the remedy into his own hands." Next he stated that the conscript law of 1862 was not passed until after a year of warfare, during which foreigners could have withdrawn, and was then passed only to have all capable of bearing arms "protect their own homes from invasion, their own property from plunder, their own families from cruel outrage. . . . "Upon the promulgation of the law objection was made by several foreign consuls ¹ to its application to the subjects of their Sovereigns, and the President directed that its provisions should not be so construed as to impose forced military service upon mere sojourners or temporary residents, but only on such as had become citizens of the Confederacy *de jure*, or had rendered themselves liable, under the law of nations, to be considered as citizens *de facto*, by having established themselves as permanent residents within the Confederacy without the intention of returning to their native land." Yet, he said, in November, 1862, Bunch and Moore had quoted Lord Russell's circular about "*ex post facto* laws", "comity", *etc.*,² to which no reply was deemed

¹ Even a cursory examination of the archives will show that this was true for several nations besides England, notably Spain and France. But apparently their consuls did not write so often or so aggressively as the British consuls did.

² See Chapter iv. Benjamin quoted practically all of Bunch's letter containing this circular.

necessary, "notwithstanding the very questionable assumptions both of law and of fact" contained in it, as Lord Russell "was not understood to insist on anything more than that British subjects resident within the Confederacy should be allowed a reasonable time to exercise the option of departing from the country if unwilling to be enrolled in its service, and in point of fact, this option had never been refused them, and many had availed themselves of it.¹ Nor was it believed that Her Majesty's Government expected a very favorable response to their appeal to this Government for the exercise of the comity between 'independent' States supposed to be involved in this subject, whilst Great Britain was persistently refusing to recognize the independence which could alone justify the appeal." Since the receipt of this circular, continued Mr. Benjamin, numerous appeals for the relief of British subjects had been granted whenever "warranted by the facts," but it soon became known that the consuls "regarded their own certificates as conclusive evidence that the persons named in them were exempt from military service,² and that these certificates were freely issued on the simple affidavit of the interested parties. Thus Consul Moore was deceived into claiming exemption for two men who were proven to be citizens of the Confederacy

¹ Oct. 15, 1863, Jones wrote: "The order of the government conscribing all foreign residents who have acquired homes in this country and the expulsion of the British consuls will be followed by another exodus. Already passports are daily applied for and invariably granted by Mr. Asst. Sec. of War Campbell." *Rebel War Clerk's Diary*, ii, 71. Jones' statements must be accepted with considerable scrutiny, but it was evidently practicable for foreigners to leave, *e. g.*, when the *Petrel* and the *Cadmus* called for that purpose. Many ran the blockade and some slipped through the lines.

² In 1836 Justice Story ruled that a consul's certificate of a fact is not evidence among three persons unless implicitly or expressly made so by statute. This was in conformity with English and American procedure. See Stowell, *Consular Cases and Opinions*, 230.

and to have been landowners and voters for a series of years prior to the war. Much inconvenience was occasioned before these abuses could be corrected, but they afterwards assumed a shape which forbade further tolerance." For, the despatch continued, instead of advising British subjects to have recourse to the courts, which were always open to them, or to appeal to the government for protection, the consuls "deem it a duty to counsel our enlisted soldiers to judge for themselves of their right to exemption, to refuse obedience to Confederate laws and authority, and even exhort them to open mutiny in the face of the enemy. . . . But a few months have elapsed since the greatest indignation was expressed by the British Government against the United States Minister at London for issuing a safe-conduct to be used on the high-seas by a merchant vessel,¹ and the ground of this denunciation was his exercise of direct authority over subject-matter within the exclusive territorial jurisdiction of the Queen. It is difficult, therefore, to conceive on what basis Her Majesty's Government have deemed themselves justified in the much graver encroachment on the sovereignty of these States which has been attempted under instructions alleged to have emanated from them. It is not my purpose here to discuss the nature and extent of the claims of the Confederacy on the allegiance of persons of foreign origin residing permanently within its limits (easy as would be the task of demonstrating the obligation of such residents under the law of nations to aid in the defense of their own homes and property against invasion), because, as already observed, the construction of the law in their favor which has been sanctioned by the President and the indulgence of the

¹ Adams' letter to DuPont about arms shipped from London to Mexico. See Dayton to Seward, *Dip. Cor.*, 1863, i, 659; Mason to Benjamin, Richardson, *op. cit.*, ii, 475; Clanricarde's colloquy with Russell, Hansard, clxx, 555 *et seq.*

Government in permitting them for many months to exercise the option of avoiding service by departing from the country deprive the discussion of any practical interest. I have been induced to place the whole subject fully in your possession by reason of a statement made by Consul Fullerton to the Governor of Georgia that in the event of the failure of his remonstrances to produce the exemption of all British subjects from service he is instructed to state that 'the Governments in Europe interested in this question will unite in making such representations as will secure aliens this desired exemption.' The menace here implied would require no answer if it were not made professedly under instructions. It is scarcely necessary to say to you that the action of the President in repelling with decision any attempt by foreign officials to arrogate sovereign rights within our limits, or to interfere with the execution of our laws, would not be affected in the slightest degree by representation from any source, however exalted. This is the only point on which the President has had occasion to act, and on this point there is no room for discussion." However he concluded, since the *droit de renvoi* was too severe to be exercised without good cause, it was necessary that Slidell should be able to explain the grounds of the President's action, lest the Imperial government should suppose French interests were in danger.¹

*Harper's Weekly*² said "Jeff Davis has taken umbrage at the action of the British consuls in reference to foreigners enlisted in the army of the rebel service and has dismissed them all from the Confederacy," but the editor was inclined to attribute this action, in fact, to "the treatment which

¹ *Pickett Papers*. This letter is also given in Richardson's *Messages and Papers of the Confederacy*, ii, 576 *et seq.*

² October 31, 1863.

Mason received at the Court of St. James." In this conclusion Dr. Callahan¹ and Prof. Bernard² agree, but it seems more probable that Prof. Butler is correct in saying:

Benjamin expresses in diplomatic phraseology what must have been an intolerable situation. . . . Shortly after Mason's withdrawal, and indeed before news of it had been received in Richmond, the difficulty about the British consuls reached its culmination. . . . Coming so closely after the breaking off of such relations as could, in diplomatic fiction, be presumed to subsist through Mason's official presence in London, this expulsion of the British consuls might easily be made to appear an act of petulant retaliation. Undoubtedly the feelings of the Confederate Secretary of State were considerably exacerbated against England, but we have seen that the existing relations with the British consuls had long constituted a serious embarrassment. This awkward situation had now terminated as it could hardly have failed to terminate. Its coincidence with Mason's recall, however, was unfortunate.³

The Harper-Bernard-Callahan opinion is a very natural one in the light of what the Southern press had been urging, in the light of their satisfaction as expressed by the *Enquirer*⁴ ("We may now expect ere long, to see a British minister at Richmond and British consuls asking *exequaturs*

¹ *Diplomatic History of the Southern Confederacy*, 176. "The Confederate authorities angered by their failure to establish diplomatic relations with England, and by the evident care which the British Government exercised to prevent giving offense to Seward, refused to recognize the *exequaturs* of the British consuls in the Southern States."

² *Neutrality of Great Britain*, 472. "The anger of Mr. Davis's Government fell soon afterwards [after Mason's recall] on the British consuls resident in the South."

³ *Judah P. Benjamin*, 319-326. The first part of the quotation refers to Moore's dismissal and the relations with Lord Lyons, but is equally applicable to the phase under discussion.

⁴ October 15, 1863.

from Mr. Benjamin; for England never neglects her subjects"); in the light of a possible construction of passages in Mr. Benjamin's letter to Slidell, and in the light of the opinions of some of the cabinet. The same day he wrote Slidell (October 8), Mr. Benjamin wrote the President the letter from which quotations were made on page 231. He enclosed a copy of the order to Fullarton

which will put you fully in possession of the facts, on which the decision of the cabinet was based, and we were all of the opinion that as soon as such an offensive encroachment on the sovereignty of the Confederacy had been made public,³ it would be very unfortunate to delay action until you could be heard from, as the telegraph would be insufficient to put you in possession of the whole case.

Benjamin added that, in order that the complete reasons for his action might reach the British cabinet, it was decided to send a dispatch to Slidell

for the ostensible purpose of keeping him advised of our action, but in reality with a view to its publication here and in London, so as to avoid misconstruction and especially to avoid alarming neutral powers in general, as to the condition of their subjects in our country.

He deprecated so serious a step in the President's absence, but trusted he would not be thought to have "overstepped the bounds imposed by necessity under the circumstances." As there were but three consuls and two were guilty, it was considered best to treat all alike. There was also discussion, Mr. Benjamin reported, as to whether they should merely be forbidden to act as consuls or ordered to depart;

³The earliest reference I find in a Southern paper to the Brown-Fullarton quarrel is October 5. The Walker-Bonham correspondence was not published.

the latter course was judged best for the reason that if they remained, they might perhaps continue to act, on the assumption that as they were appointed by their own government which did not recognize us, they were not bound to obey our orders, and in such case further and more decisive measures would become necessary. Several members of the cabinet expressed the opinion that this action of the consuls was very fortunate, as it enabled us, by sending them away for a cause that so fully warrants their expulsion, to satisfy public sentiment, which would have been quite restive under their continued residence here after Mr. Mason's departure from England.¹

This letter shows a yielding to public sentiment, at last, but not for the reason demanded by the press, and only for due cause. The last sentence indicates that had not occasion arisen, this action would not have been taken, even though the press continued to clamor. We have seen that Secretary Seddon was much offended by Moore's letter to Caldwell,² and no doubt he was glad of this opportunity of putting Moore's colleagues in the same boat; other members probably felt the same way, others may have agreed with public opinion. Another possible element in the determination of the question was the fact that the three consuls in question were in North Carolina, South Carolina, and Georgia, none of which was noted for its quiescence under what it considered trespass on its sovereign prerogative, and none of the three governors was on particularly cordial terms with the administration; here was an opportunity to placate them. But the cabinet would not have acted if the Secretary of State had not assembled it, which he did not do until he received Fullarton's letter. It is barely possible that he had wanted for a long time to expel the consuls and could

¹ *Pickett Papers.*

² *Cf. supra*, p. 87.

not obtain Mr. Davis's consent, so took advantage of his absence to carry out his own purpose; but this is very unlikely, as Mr. Davis had enough trouble with Yancey, Foote, Bragg, Vance, and other affairs, and was quite content to let Mr. Benjamin run the State Department.

Expulsion for spite seems contrary to the whole policy of the administration. If Benjamin or Davis had wanted to make a complete breach with England, it would have been simple to tell Mason, in the instructions to withdraw, to inform Lord Russell that orders had been issued for the British consuls to depart. But two months elapsed before the expulsion of the consuls. The dispatch ordering Mason's withdrawal was dated August 4, and with it went a private note authorizing Mason to use his discretion about obeying the instructions. Mason received these September 14, and on the 21st forwarded the formal one to Lord Russell. This action he reported to Mr. Benjamin on the 25th, his letter reaching Richmond October 23, over two weeks after the expulsion; the same news was sent to Slidell about the same time.¹ However, from the tone of his letters of August 4, we know that Mr. Benjamin did not expect Mason to remain in London. October 5, the *New York Herald* announced in the Liverpool correspondence of September 19 that Mason had received his orders, and would probably communicate them to Lord Russell soon. Next day the *Times* had clippings from the London papers of September 23, speaking of it as an accomplished fact, and the Southern papers announced it October 8. Benjamin evidently determined on the expulsion on the 6th, and the cabinet acceded to his wishes next day; it is quite possible that Benjamin had received telegraphic

¹ Benjamin's to Mason (Aug. 4) are in Richardson, *op. cit.*, ii, 539. Slidell's of Sept. 22 and Mason's of 25th are in the same volume, 563 and 572.

news of Mason's action, but Prof. Butler (see page 241) thinks he was still ignorant of it. Even if he knew it, it does not seem probable that this intelligence was the determining factor.

As said before, this seems contrary to the consistent policy of the administration. December 11, 1861 (before Mr. Benjamin became Secretary of State) the State Department notified the governor of Louisiana that one Panghan had recently landed at Norfolk, *en route* for New Orleans, with an *exequatur* from Lincoln as Saxon consul. This invalidated his commission and the governor was requested to prevent his acting as consul.¹

We have seen that there was no hesitation in expelling Théron and refusing to let Lanen act, though France seemed much disposed to favor the Confederacy. We know what happened to Moore and Cridland, long before Mason was recalled: Walker and Fullarton were made to show their papers very promptly; the same was true of Spanish and Dutch consuls.² Lord, the Spanish vice-consul at Wilmington, was told in August, 1863, that his position did not exempt him from conscription.³ Mr. Benjamin's action was in accordance with international law and states-rights as understood by him and the South generally: the United States as agent granted *exequaturs* before 1861, the revocation of this "power of attorney" by the principal did not invalidate these *exequaturs*, and new ones were not needed so long as the holders discharged their functions in an equitable manner; but any new consul must get his *exe-*

¹ *Pickett Papers*. His name does not appear in the list of consuls petitioning Gen. Butler, nor that of any agent for Saxony. *O. R. A.*, 3, ii, 121.

² *Pickett Papers*.

³ *Ibid.* Mr. Benjamin suggested that it was his duty to resign and volunteer, but did not coerce him.

quatur from Richmond, and any old one, regardless of nationality, who exceeded his legitimate sphere, or failed to show proper respect for the "*de facto* government of the so-called Confederate States" would have his revoked. The most flagrant case of disrespect was Fullarton's, apparently under orders which his colleagues were obeying also; in the light of the previous chapters, expulsion was certain. Undeniably, it was cheerfully and even gladly done, but it is very doubtful if it would have been done, had not this or an equally valid occasion offered. This belief is strengthened by Mr. Davis' telegram to Benjamin from Atlanta, in which he said the Secretary was confronted by a sudden emergency which warranted the action taken. This was not intended for publication, and has apparently never been heard of before. With it is one from Governor Brown, whose approval was a foregone conclusion.¹ About this time, also, Secretary Seddon asked if the Rev. James Sinclair, who had held a colonel's commission in the Confederate army, but now wanted to return to England, was exempt as an alien. Mr. Benjamin said he was liable to conscription, but suggested that he be excused as a matter of expediency. Here was an excellent opportunity to impress upon England the desirability of having consuls in the Confederacy, had that been Mr. Benjamin's desire. But in his letters to Mason and Slidell about Théron, Moore, Magee and the expulsion, and in his report to Congress he had enunciated and reiterated that it was not the Confederacy's policy to compel the implied recognition that the demand for an *exequatur* would involve. That, of course, may have been merely the sounding brass and tinkling cymbal of "diplomatic phraseology", but there seems no

¹ Both telegrams are in the *Pickett Papers*. Davis' is dated October 22, Brown's November 10.

valid reason to doubt his sincerity, in the light of his acts. In his letter to Dargan about Cridland, he said: "We permit no *new officers* of foreign governments to come here *unless accredited to us*. . . . We *hope* that the difficulties foreign governments find in transacting business in the Confederacy will embarrass them so much as to force action on *their part*, but we must keep strictly within the rules" ¹ (of international law and diplomatic usage). And as the *Richmond Sentinel* remarked, in regard to Moore's dismissal and the clamor of the other papers for a general expulsion: "It would but expose us to ridicule to dismiss a few foreign consuls from our beleaguered ports, and withdraw the agents whom, for our own interest and convenience we have sent to Europe, in the childish expectation that we should thereby intimidate and coerce Europe to recognize our independence. . . . What the great need for our cotton cannot do for us, the dismissal of a few petty consuls will hardly accomplish." ² This was the administration paper and was probably speaking *ex cathedra*.

The opinions of the other journals tend to strengthen the belief that Mason's recall did not precipitate the expulsion. Of course they all rejoiced over the event; but many were not wholly satisfied. The *Mercury* agreed with the *Richmond* papers that the wrong reason had been assigned for the dismissal, which they attributed to Mason's withdrawal. This was perfectly natural, as they had been insisting on this for years and felt that if the administration did not hold the same opinion it ought to. The *Enquirer* ⁴ rejoiced over the expulsion "on the heels of Mason's recall", and said the real reason was that Mr. Davis had become convinced

¹ *Pickett Papers*. Italics mine.

² Quoted in *Sess. Papers*, 1864, lxii, 387.

³ October 17, 19. It announced the dismissal Oct. 14.

⁴ October 15.

that England could be no friend to the Confederacy, however much she would like to see the United States disrupted. As we know, Davis was not even aware of the expulsion until it was too late to have prevented it. Four days later the *Enquirer* agreed with the *Courier* that the action met with "very general approval on grounds of self-respect and public policy", but in three weeks it was censuring the administration for not dismissing all consular representatives, and recalling all commissioners. That is, in the opinion of these editors the same reasons existed for expelling all consuls as had existed before the offensive conduct of Walker and Fullarton, regardless of the conduct, the personality or the sympathies of these representatives, while Mr. Benjamin had dismissed only those who had interfered directly with the discipline of the troops. The Petersburg *Express*¹ seems to have been the only paper besides the official organ to approve of his reasons.

The *Albion*² agreed with the Southern papers that when Fullarton advised British subjects to throw down their arms "the long-nursed wrath of the Richmond Government exploded and President Davis decreed forthwith the expulsion of the British consuls. . . . The withdrawal of Mason from London must have led to this step, had nothing else occurred. We most deeply regret that our unfortunate countrymen are left without the shadow of protection; but we cannot perceive any remedy for their trouble." The London *Times*, October 31, announced that in consequence of the advice of the British consuls at Richmond [*sic*] to British subjects conscribed for the Confederate army to throw down their arms, *etc.*, the "exercise of the

¹ A clipping from the *Express*, combating the opinion of the *Whig*, is given in the *Index* for November 5, 1863.

² October 24.

functions of the office of these consuls is suspended by President Davis and themselves ordered to quit the Confederacy as quickly as possible." The *Index*¹ thought that in its desire to preserve amicable relations the Confederacy had "erred rather by being too prone to waive incontestable rights than by unnecessarily asserting them." For some time, the editor explained, the Secretary of War had followed his own wishes rather than the letter of the law, and habitually discharged conscribed foreigners, but the evil became so great and the consuls so "loose in the issue of certificates of alienage" that the matter was referred to the attorney-general, who ruled that sojourners were exempt, but domiciled aliens liable. The editor doubted if this rule was ever strictly enforced, though in several *habeas corpus* cases the courts had decided that it was "in conformity with common-law and international usage."

In his annual message,² the President informed Congress that "it has been found necessary since your adjournment to take action on the subject of certain foreign consuls within the Confederacy. The nature of this action and the *reasons on which it was based* are so fully exhibited in the correspondence of the State Department, which is transmitted to you, that no additional comment is necessary." Two days later the insatiable Mr. Foote moved that the Foreign Affairs Committee (of which he was chairman) be instructed to enquire into the expediency of withdrawing *all* diplomatic agents from countries that had not by February 1, 1864, "recognized the national character of the Confederacy", and of dismissing all consuls who should not have by that

¹ November 5. This issue contains numerous clippings from Virginia and Georgia papers, approving the expulsion.

² Dec. 7. Italics mine. The message is in *Journal*, vi, 503; Richardson, *op. cit.*, i, 345; *Annual Cyclopaedia*, iii, 788.

time received *exequaturs* from "our own Government."¹ Though he introduced two similar resolutions in 1864,² they referred to commissioners only, as though he were finally convinced that consuls would be dismissed only for cause.

If it be suggested that the failure to expel the French consuls was due to the fact that Slidell was not recalled, it may be noted that though Lamar's mission to Russia was an utter failure, the Czar's consuls were not expelled. The severest verdict on the charge that the British consuls were dismissed in retaliation for Mason's being ignored must be: "not proven".

But what was the effect of the "expulsion" on the consuls? Benjamin sent his orders for them to depart to the collectors of the customs at Wilmington, Charleston and Savannah, with instructions that they be delivered to McRae, Walker and Fullarton, which was done. We have seen that the last two replied to Benjamin to the effect that their remarks about men drafted for the State militia could not be "fairly tortured into a connection with 'enlisted men' nor 'Confederate laws'".³ They also sent copies of the correspondence to Lord Russell. October 16 and 23, Lord Lyons sent the newspaper accounts, saying he had no official information. When he received authoritative intelligence from Walker he forwarded it in the letter quoted in connection with Magee's recall.⁴ McRae wrote from Chatham, N. C., October 15, that he had anticipated Mr. Benjamin's order by resigning the office of vice-consul; that he was a Confederate citizen and for the last twenty-

¹ *Journal*, vi, 516.

² May 9 and November 8. *Journal*, vii, 43 and 261.

³ *Sess. Papers, loc. cit.*, 401.

⁴ See Chapter viii.

one months had been making iron. "Such limited consular duties," he continued, "as have been performed by me or by deputy, have been mainly confined to reports concerning the blockade, and such other matters as I believed would not injure if they did not benefit the Confederacy." Hence he respectfully asked not to be expelled.¹ The Secretary replied that the order had been given on the supposition that McRae was a British subject, so he need not obey it. Fullarton and Walker also wrote on the 15th, the latter sending the dispatch quoted above, in which he requested that orders be issued permitting him to communicate with any British vessels appearing. Fullarton said he had suspended his official activities but in the interest of several persons then absent, whose business was in his charge, he asked permission to remain as a private individual. Next day the president of a Savannah bank wrote the Secretary of State that Fullarton was generally respected in the city, was friendly to the Confederacy and had charge of Molyneux's interests with the bank, therefore he requested that leave be given Fullarton to remain; accompanying this was a petition to the same effect, signed by several prominent citizens. On the 22d, Fullarton sent his official protest, accompanied by a private note in which he regretted not having received a reply to his request for the "rescission" of that portion of the order of the President which required him "actually to withdraw from the Confederacy." On the 19th Mr. Benjamin got from Mr. Seddon an order permitting the "late acting British consul at Charleston" to communicate with any vessel of the Royal navy "passing the consular district". and sent it to Walker. He notified Fullarton, November 10, that the President refused his request and urged him to leave as soon as possible.

¹ This and the rest of the letters quoted in this paragraph are in the *Pickett Papers*.

H. B. M. S. *Plover* appeared off Morris Island, November 3, and wished to communicate with Walker. Admiral Dahlgren said in view of existing military conditions he must refuse, but he was sure there was always communication with Richmond from the Legation at Washington. The commander of the *Plover* told him this was forbidden by the Confederates: after he left, Dahlgren relented and sent a flag-of-truce with mail for Federal prisoners and letters to the French and British consuls telling them they might send official dispatches by the flag-of-truce boats. The Confederate officer refused to receive anything not addressed to General Beauregard, and two days later the letters, so addressed, were sent again, but again refused.¹ Upon the receipt of the admiral's report Secretary Welles ordered him thenceforth (November 30) to allow no communication whatever, by neutrals or others, with Charleston or any portion of the "insurrectionary region", through that port during the pending military operations.² So when the *Plover* appeared off Savannah, December 15, the commander was not allowed to communicate with Fullarton. The same thing occurred in February, 1864, when the *Petrel* wanted to communicate with Benjamin and Fullarton.³ This explains why Walker and Fullarton remained in the Confederacy throughout the war. Walker had had one tilt with General Beauregard, so probably was careful to do nothing to attract his or Benjamin's attention; and as long as he did not thrust himself upon their notice, they were oblivious of his existence. As Mr. Benjamin's orders were sent by the collectors of the ports, these officers would no doubt have apprized him if the "late" consuls had attempted any official action. Smith, who was appointed consul at

¹ *O. R. N.*, xv, 116, 130 *et seq.*

² *Ibid.* 143.

³ *Ibid.* 180, 316.

Savannah in June, 1865, reported that he "reestablished the British consulate which had been inoperative since October, 1863,"¹ though Fullarton had continued to reside there. Cridland, as we have seen, was supposed to be awaiting orders to return to England. According to his own account General Maury kept an eye on him, and Mr. Benjamin continued to send him private mail received through the blockade.² Of course when Mobile was invested the same rules about communication were enforced as at Charleston and Savannah. As Galveston was not so closely beleaguered, Lynn continued to communicate with British men-of-war,³ and we saw in Chapter IX that he remained there until 1882.

In the British consular estimates for 1864 the usual appropriations were asked for the Charleston, Savannah and Mobile consulates, and if Mr. Benjamin read the *Gazette* during his residence in London it must have been a source of gratification to read that his old friend Walker was appointed consul at Charleston in September, 1865, and Cridland at Mobile in the following January. Both of them appear to have resumed their functions as soon as their ports were evacuated by the Confederates. Fullarton apparently did not retain the confidence of the Foreign Office, as he was superseded by Smith. We have seen that Donahoe went to New Orleans in 1864. The Richmond office was discontinued for some years, Virginia headquarters being moved to Norfolk.⁴

In England, the immediate effect of the expulsion was that Lord Russell ordered Crawford, consul-general at Havana, to "proceed to Richmond to remonstrate", and

¹ *Sess. Papers*, 1866, lxv, 113 *et seq.*

² *Pickett Papers*.

³ *O. R. N.*, xx, 293; xxi, 159.

⁴ *Almanach de Gotha*, 1865 *et seq.*

Lord Lyons was instructed to obtain permission for a Royal vessel to take him through the blockade at Wilmington or Charleston.¹ Mr. Seward refused this request, probably because in 1861 Shufeldt, United States consul at Havana, stigmatized Crawford as a "rebel sympathizer" and accused him of aiding Slidell and Mason,² and not because Mr. Seward agreed with Sir James Elphinstone that sending Crawford to Richmond was tantamount to a recognition of the Confederacy.³ March 4, 1864, the Solicitor-General said: "It was by no means easy to make communications with the Confederate Government, nor was the difficulty lightened by their having expelled our consuls."⁴ Three months later Lord Russell said rather peevishly, when the Marquess of Clanricarde wanted him to go to war with the United States for impressing British subjects: "The Confederate authorities are in the constant habit of ordering conscriptions and forcing British subjects to serve under their standard. When our consuls have remonstrated, they have been told, in the first place, that they might apply to the courts of justice, and then when they repeated their remonstrances, the consuls themselves were sent away altogether. . . . If war is our only remedy, we must go to war with both belligerents."⁵

This was sometime after Clanricarde's lengthy speech of April 5, in which he spoke of the kindly attitude of the Confederates towards the consuls at the outbreak of the war, the "outrageous" seizures of Bunch's dispatch-bag, and the sad case of Magee, who, if he "had given aid to either [belligerent] it was to the Federals, by sending

¹ *Dip. Corr.*, 1864-5, ii, 568.

² *O. R. A.*, 2, ii, 1124 *et seq.*; 3, i, 871.

³ Hansard, clxxiv, 1979.

⁴ *London Times*, March 5.

⁵ Hansard, clxxv, 1452.

money out of the Confederate States." The marquess thought Mr. Benjamin had not "acted unbecomingly" in Cridland's case, and said Moore was dismissed for using "disrespectful language towards the Confederate Government." He thought it "hardly credible that any Englishman and quite impossible that a British Government" could have given the instructions Fullarton claimed to have received. Anyhow he did not think that British subjects were entitled to the exemption, and the attempt of the two consuls "was intolerable in any functionary". He would not say there should be an immediate recognition of the Confederacy, but intimated rather plainly that the Foreign Secretary had made a mess of things generally.¹ That statesman replied at length. He did not think that British subjects ought to be compelled to serve in either army. He too thought Mr. Seward had revoked Bunch's *exequatur* "very unfairly". Lord Lyons, he said, was not to blame for Magee's removal, which was ordered by the Foreign Office. Cridland was told "to go to Mobile not as consul but to act as consul." He agreed that Fullarton's advice to British subjects not to "resist enlistment . . . but to desert their colors in the moment of action" was an unjustifiable act, and the Foreign Office had issued no such instructions, and "if the Secretary of State of the Confederate States had written to this country to complain of that conduct", he should have "thought it right to reprimand and even dismiss the consul who had acted in so improper a manner." But, he continued, expulsion of the consuls left British subjects only an appeal to the courts; it was easy to write to a consul, "but the idea that a man marching about should go to a court of law was a futile suggestion;" therefore he thought the action of the Confederate government "a very

¹ Hansard, clxxiv, 450 *et seq.*

harsh and unfriendly proceeding". He had tried to send a letter to Richmond to see if "British consular agents or persons under any other name" would be received, but Crawford was not allowed to pass the blockade. As to his friend's motion for the papers in the case, he would like to amend it by putting "so-styled" before "Confederate States, otherwise it might seem as if the House had recognized the Confederate States, although Her Majesty had not done so."¹

It is not clear just how Lord Russell expected Mr. Benjamin to communicate with him: Mason was gone, and even had Benjamin been willing to send diplomatic correspondence by a consul, he could scarcely have used one as the channel for transmitting complaints against himself. The whole speech is typical of Lord Russell's gnat-and-camel attitude: he was evidently trying to appear neutral, however much he may have favored the North and disliked the South; consequently he succeeded in offending both, as did Lord Lyons, who really seemed desirous not only of appearing but of being neutral.

The consuls were in many respects friendly to the Confederate cause and were quite willing to favor it so far as smuggling unofficial letters into their dispatch-bags and conniving at blockade-running was concerned, but when they felt that the rights of British subjects were endangered they did their best to secure relief, but usually with more vigor than tact. They were placed in a very anomalous position, unable to communicate either quickly or regularly with the Legation or the Foreign Office; personally popular at first, they soon became officially unwelcome, and disaster was easy to predict. The identity of the language of both belligerents with their own put them in a situation unlike

¹ Hansard, clxxiv, 457 *et seq.*

that of any other nation's consuls. With all their experience and acumen, apparently Lord Lyons and his chief did not see that calling the struggle then pending a "civil war" begged the whole question for which the Confederates were contending. Perhaps those parts of the circulars were intended mainly to make the British position clear to the consuls, and not as messages to the Confederate authorities, but the consuls were quite justified in thinking they were expected to quote these documents literally. On the other hand, they had lived in the South long enough to have been aware that such an argument was sure to defeat its purpose. Fullarton's wild talk about throwing down arms when a Federal fleet was at Savannah, a Federal army near Chattanooga, and Joe Brown midway, with Streight's raid fresh in his memory—was a veritable spark to powder. To Mr. Benjamin it was exhorting soldiers to "open mutiny in the face of the enemy". The conscription act was not very welcome in any of the States; it was declared unconstitutional by a Georgia court,¹ and caused wrangles between the President and various governors. Mr. Benjamin, therefore, realized that Fullarton and his associates must be rebuked in a way decisive enough to prevent conscripts following their advice and to preclude consuls of other nations from following their example. Accordingly, when the matter was officially brought to his attention by Fullarton and unofficially by the press at the same time, the result was almost automatic.

To end where we began, the initial mistake was the report of July 30, 1861, in the Provisional Congress.² Had a decided stand been taken then, either way, the result might have been unfortunate for the Confederacy, but probably

¹ *Courier*, September 29, 1862.

² *Journal*, i, 294. For a somewhat analogous opinion see Adams, *Charles Francis Adams*, 158 *et seq.*

much expense and vexation and fruitless bickering would have been avoided. England had long practised the art of delaying action till she saw which way the wind blew: for a nation in its swaddling clothes to try to beat her at that game was to invite disaster. The invitation was accepted.

APPENDIX

I. BRITISH CONSULAR OFFICIALS IN THE SOUTH, 1860-65¹

<i>Virginia:</i>	George Moore, Consul, Richmond. F. J. Cridland, Vice-consul, Richmond. Peter Goolrick, Vice-consul, Fredericksburg. Meyer Meyers, Vice-consul, Norfolk.
<i>Carolina:</i>	Robert Bunch, Consul, Charleston. H. P. Walker, Vice-consul, Charleston, D. McRae, Vice-consul, Wilmington.
<i>Georgia:</i>	Edward Molyneux, Consul, Savannah. Allan Fullarton, Vice-consul, Savannah.
<i>Alabama and Florida:</i>	{ Charles Tulin, Consul, Mobile. Charles Labuzan, Acting-consul, Mobile (1860-61). James Magee, Acting-consul, Mobile (1861-62). E. L. Heep, Vice-consul, Pensacola. R. W. Welch, Vice-consul, Key West (1860-63). A. C. Butterfield, Vice-consul, Key West (1863 ff).
<i>Louisiana:</i>	William Mure, Consul, New Orleans (1860-1). Dennis Donahoe, Consul, New Orleans (1864). George Coppel, Vice-consul, New Orleans.
<i>Texas:</i>	A. T. Lynn, Consul, Galveston.

¹ Compiled from British, Confederate and United States Documents.

II. CONFEDERATE CABINET OFFICERS¹

<i>Secretary of State:</i>	Robert Toombs,		
	Georgia,		Apt'd Feb. 21, 1861.
	R. M. T. Hunter,		
	Virginia,	"	July 25, 1861.
	W. M. Browne,		
	Georgia,	"	(<i>ad interim</i> .)
	J. P. Benjamin,		
	Louisiana,	"	March 18, 1862.
<i>Secretary of Treasury:</i>	C. G. Memminger,		
	South Carolina,	"	Feb. 21, 1861.
	G. A. Trenholm,		
	South Carolina,	"	July 18, 1864.
<i>Secretary of War:</i>	L. P. Walker,	Alabama.	" Feb. 21, 1861.
	J. P. Benjamin,		
	Louisiana,	"	Nov. 21, 1861.
	G. W. Randolph,		
	Virginia,	"	Mar. 17, 1862.
	G. W. Smith (Acting),		
	Kentucky,	"	Nov. 17, 1862.
	J. A. Seddon,	Virginia,	" Nov. 21, 1862.
	J. C. Breckinridge,		
	Kentucky.	"	Feb. 6, 1865.
<i>Secretary of Navy:</i>	S. D. Mallory,		
	Florida,	"	March 4, 1861.
<i>Attorney General:</i>	J. P. Benjamin,		
	Louisiana,	"	Feb. 25, 1861.
	Thomas Bragg,		
	North Carolina,	"	Nov. 11, 1861.
	T. H. Watts,	Alabama,	" March 18, 1862.
	Wade Keyes,	Alabama,	" (<i>ad interim</i>).
	George Davis,		
	North Carolina,	"	Jan. 2, 1864.
<i>Postmaster General:</i>	H. T. Ellett,	Mississippi,	" Feb. 25, 1861.
	J. H. Reagan,	Texas,	" March 6, 1861.

¹This table and No. III are taken from the late Col. Robert C. Wood's valuable *Confederate Handbook*. For permission to reprint I am indebted to the kindness of his son, Mr. Trist Wood of New Orleans. There is also a list of the Cabinet in *O. R. A.*, 4, iii, 1184.

III. CONFEDERATE WAR GOVERNORS¹

<i>Alabama:</i>	A. B. Moore,	1857-61.
	J. G. Shorter,	1861-63.
	T. H. Watts,	1863-65.
<i>Florida:</i>	M. S. Perry,	1857-61.
	John Milton,	1861-65.
<i>Georgia:</i>	J. E. Brown,	1857-65.
<i>Louisiana:</i>	T. O. Moore,	1860-64.
	H. W. Allen,	1864-65.
<i>Mississippi:</i>	J. J. Pettus,	1859-63.
	Charles Clark,	1863-65.
<i>North Carolina:</i>	J. W. Ellis,	1859-61.
	H. T. Clark (Acting),	1861-62.
	Z. B. Vance,	1862-65.
<i>South Carolina:</i>	F. W. Pickens,	1860-62.
	M. L. Bonham,	1862-64.
	A. G. Magrath,	1864-65.
<i>Texas:</i>	Edward Clark,	1861.
	F. R. Lubbock,	1861-63.
	Pendleton Murrah,	1863-65.
<i>Virginia:</i>	John Letcher,	1860-64.
	William Smith,	1864-65.

¹ I have included only the governors of those states figuring in the monograph. The most convenient place to find the others is the *Confederate Handbook*.

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² These are both in pamphlet form.

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56. The fifty-sixth part is a list of names.

57. The fifty-seventh part is a list of titles.

58. The fifty-eighth part is a list of names.

59. The fifty-ninth part is a list of titles.

60. The sixtieth part is a list of names.

61. The sixty-first part is a list of titles.

62. The sixty-second part is a list of names.

63. The sixty-third part is a list of titles.

64. The sixty-fourth part is a list of names.

65. The sixty-fifth part is a list of titles.

66. The sixty-sixth part is a list of names.

67. The sixty-seventh part is a list of titles.

68. The sixty-eighth part is a list of names.

69. The sixty-ninth part is a list of titles.

70. The seventieth part is a list of names.

71. The seventy-first part is a list of titles.

72. The seventy-second part is a list of names.

73. The seventy-third part is a list of titles.

74. The seventy-fourth part is a list of names.

75. The seventy-fifth part is a list of titles.

76. The seventy-sixth part is a list of names.

77. The seventy-seventh part is a list of titles.

78. The seventy-eighth part is a list of names.

79. The seventy-ninth part is a list of titles.

80. The eightieth part is a list of names.

81. The eighty-first part is a list of titles.

82. The eighty-second part is a list of names.

83. The eighty-third part is a list of titles.

84. The eighty-fourth part is a list of names.

85. The eighty-fifth part is a list of titles.

86. The eighty-sixth part is a list of names.

87. The eighty-seventh part is a list of titles.

88. The eighty-eighth part is a list of names.

89. The eighty-ninth part is a list of titles.

90. The ninetieth part is a list of names.

91. The ninety-first part is a list of titles.

92. The ninety-second part is a list of names.

93. The ninety-third part is a list of titles.

94. The ninety-fourth part is a list of names.

95. The ninety-fifth part is a list of titles.

96. The ninety-sixth part is a list of names.

97. The ninety-seventh part is a list of titles.

98. The ninety-eighth part is a list of names.

99. The ninety-ninth part is a list of titles.

100. The hundredth part is a list of names.



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